THE CENTRAL LAW JOURNAL

SEYMOUR D. THOMPSON, Editor. } ST. LOUIS, FRIDAY, JUNE 18, 1875. { Hon. JOHN F. DILLON, Contributing Editor.

THE POWER OF RELIGIOUS CORPORATIONS TO HOLD LAND.—In a previous issue, (*ante*, p. 343), we criticised the language in which the 8th section of the bill of rights adopted by the Missouri Constitutional Convention, in committee of the whole, was expressed. We learn that the provision offered by Judge Adams read as follows, and not as we printed it:

> Eighth, That no religious corporation can be established in this state, except such as may be created under a general law for the purpose only of holding the title to such real estate as may be prescribed by law for church edifices, parsonages and cemeteries.

ACKNOWLEDGMENT.—We take pleasure in acknowledging that we have received from judges and members of the bar, a number of valuable opinions, several of them delivered by the justices of the Supreme Court of the United States at Circuit. Hence we shall print as fast as possible, but our readers will expect us to give them next week the judgment of the Supreme Court of the United States, in the great admiralty case, the Lotawana, holding that there is no lien for supplies furnished a vessel in a home port. The dissenting opinion of Mr. Justice Clifford is particularly rich in research, and will be read with great profit by every student of admiralty law.

A CASE OF LEGAL MALPRACTICE.—The General Term of the New York Marine Court has lately had before it a disgraceful case, in which William N. Loew, an attorney of that court, was convicted of altering the verification to an answer which had been served upon him, so as to make it insufficient under the statute. The decision of the court, Judge Shea delivering the opinion, is published in the Daily Register for June 8th. It would not be profitable to detail that portion of the learned Judge's opinion in which he recapitulates the facts. Suffice it to say that the testimony made it clear that Loew committed the forgery out of malice to the Langbein Brothers, the plaintiff's attorneys, and with the intention of charging the crime upon them, which he afterwards did. In the course of his opinion the learned Judge said:

> We take this occasion to remark that instances of improper professional conduct are neither few nor far between in our daily experience; and it can be no gratification when we are informed that in this respect this court is not unlike other courts of record in this city. But it is well worth remarking how these delinquents appear to have been in some irregular way improvised into the profession; are very crude in their notions of the principles of law and its methodical practice; and so little care seems to have been taken about who and what they were, that they frequently remain unknown to the bar and public until some of their misdeeds attract attention to them specifically. In many cases they cannot be said to have fallen from grace, as they seem never to have attained it. Their intellectual and social qualifications for the honorable, efficient practice of the law are not much above their moral deficiency; and we feel safe in asserting the truth to be that the formal, technical admission as attorneys of such persons cannot be preceded by positive affirmative information concerning their reputation. The personal history which an attorney, a chief witness in support of the charge against the Langbein Brothers, gives of himself in his testimony, with a morbid candor, is not that kind which educates for an important and learned profession that assumes the protection of the property, lives and—nay more than all—the reputation of clients. How these elude the barriers which are set up by the law regulating the admission of proper citizens, of good moral character and competent knowledge of the law, is a subject which should receive, when the occasion is as now presented, a serious consideration from the Supreme Court; and to this end we call attention to the present case, by transmitting and certifying to that tribunal the proceedings herein.

The court ended by imposing a fine of four hundred and eighty dollars upon Loew, to be paid by him to J. C. Julius Langbein for his indemnity, and to satisfy his costs and expenses concerning the reference and in this behalf; and it was further directed that Loew be imprisoned in the proper jail in default of paying, and until he should pay the said fine of four hundred and eighty dollars, or until the further order of the court. A good and wholesome example. It also appeared that Loew had an accomplice, another attorney named Lowenthal, in whose office he had desk-room. An order to Lowenthal to show cause why he should not be punished for contempt was also directed to be served upon him.

EXTRA-TERRITORIAL FORCE OF EXEMPTION LAWS—FOREIGN ATTACHMENT.—The case of Morgan v. Neville, 74 Penn. St. 52, is very similar to the case of Pierce v. Chicago & N. W. Ry. Co., *ante*, p. 377, although a different conclusion was reached. Morgan owed Neville wages for labor contracted for and performed in Pennsylvania, and Neville owed Shannon for goods sold to him in Pennsylvania, where the three were residents. Shannon finding Morgan in the state of Maryland, sued out an attachment there, and attached in the hands of Morgan the amount due by Morgan to Neville. Morgan gave notice of this proceeding to Neville. There was no evidence of any collusion between Shannon and Morgan, the garnishee. Judgment was rendered against Morgan, as garnishee, by default, and he paid over the amount adjudged against him. Neville afterwards sued Morgan in Pennsylvania, and it was held that the payment of the debt in pursuance of the judgment of the justice of the peace in Maryland was a good defence to the action. It will be seen that this case is in the main opposed to the Wisconsin judgment. The Pennsylvania court held that Shannon, as a citizen of Pennsylvania, had, under the constitution of the United States (Art. 4, § 1), the same right to sue in the Maryland courts as though he had been a citizen of Maryland. No such proposition was advanced as that it was the duty of the garnishee to plead before the Maryland tribunal the Pennsylvania exemption law, although it was admitted that to be noticed it should have been pleaded; but on the other hand the court say that such laws were not a part of the contract, and were not carried with the debt into the Maryland forum, but that the remedy there was regulated by the laws of Maryland. The two cases agree, however, in holding that a garnishee in foreign attachment must give notice to his own creditor. The case of Noble v. Thompson Oil Co., 69 Penn. St. 415, was cited to the court, but that case only holds that the rightful payment of a debt by a garnishee in a foreign attachment will discharge bail who are liable in a domestic tribunal for the same debt—a conclusion too obvious to have needed discussion. The case of Steele v. Smith, 7 Watts & Serg. 447, was cited by the court and distinguished. It is noteworthy that Morgan v. Neville was decided in view

of the provisions of the Maryland statute, and the court was not obliged to resort to the foolish presumption that the Maryland statute was the same as that of Pennsylvania, nor to the scarcely less violent presumption that the common law on the subject of attachments and exemptions was in force in the former state; but those laws were undoubtedly pleaded and proved. It seems to us that where the party whose duty it is to plead and prove a foreign law fails to do so, and thus obliges the court to resort to presumptions, the court ought to treat him as a spoliator, or as one who conceals the truth, and presume all things against him.

Book Reviews.

The indiscriminate practice to which some law journals are addicted, of puffing every new law book that comes out, deserves severe reprobation. The subscribers of a legal journal have a right to expect that when a new law book is issued from the press, it shall advise them with some degree of candor, and after taking some pains in the investigation, whether it is worthy of a place in their libraries or not. This is the more necessary, since the business of writing legal treatises has of late years to a great extent fallen into inexperienced and incompetent hands. We do not mean to urge that experience or even age is a necessary qualification in one who undertakes to write a law book. If this had been so, we should never have had the great work of Lord Saint Leonards, the immortal work of Blackstone, nor many others that could be named. On the contrary, paradoxical as it may seem, we believe that a certain degree of *ignorance* is a favorable qualification in one who undertakes such a task. In other words, we believe that if a man possesses sufficient ignorance, sufficient industry, a mind capable of grasping legal principles, and an adequate command of the English language, he will be apt to write a good law book.

The ignorance to which we here refer is not the deep and stolid ignorance which renders its subject incapable of perceiving in some faint degree the boundary-line which in every well balanced mind divides the little one does know, from the much he does not; but we mean that modest and conscious ignorance, which continually doubts its own attainments and stimulates to renewed research. The reason why we think ignorance a favorable quality, is that the writer who begins his task ignorant of that which lies before him, will unfold his subject to his reader as it unfolded itself to him; and thus, perspecuity will shine on all his pages; whereas, a writer who commences his task with a mind thoroughly imbued with his subject, will be apt to fall into the error of judging his readers by himself—of supposing that they knew more about it than they really do. He will therefore fail in not sufficiently amplifying those general principles on which all legal argument must rest, and his book will possess the fault of obscurity. To what is here said, an exception must be made in the case of those members of the profession who are engaged in the instruction of law-students. The constant habit of explaining elementary principles to law-students, renders such persons, of all others, best qualified for the duties of legal authorship; and the works of Blackstone, of Kent, of Story, of Greenleaf, of Parsons and of Washburn, fully attest the pre-eminent merits of such writers.

But to get back to the point from which we have digressed, it has fallen out of late years that many lawyers who are unable either to manage causes, to advise clients, or to write good English, feel themselves entirely competent to construct treatises on abstruse branches of the law; and such books as Coler on Municipal Bonds, and Herman on Estoppel, present themselves to the profession as instances, on the one hand, of a man who could pretend to write a book involving difficult questions of constitutional law, without knowing that a sovereign state can not be sued but by its own consent; and on the other, of a man who could venture into the field of legal authorship without any adequate conception of the manner of constructing English sentences. It is the duty of a law journal, when such books appear, candidly to point out their faults, without seeking to obscure their merits, if any they have.

Not less pernicious than the practice of indiscriminate puffing on the part of law journals, is the habit of judges and eminent practitioners of indiscriminately endorsing every new book whose author appeals to them for the benefit of their signatures. It must be difficult to refuse such applications; but if those who are thus appealed to would reflect that it is just possible that the recommendations they are asked to sign may not be true, and that unless they know, or have good grounds for believing them to be true, it is *dishonest* to sign them, because it may work a fraud on the profession, they would not so readily yield to such solicitations. We are led to these reflections by seeing in the Cincinnati Commercial, a review of a book entitled "Spalding's Treatise: The Practice and forms at Large in Justices Courts for the State of Ohio, and an Analysis of the Law and Practice Concerning Personal Property." The reviewer shows by numerous citations that the book abounds in errors, and then observes:

> We observe that the work has the indorsement of several prominent judges and members of the bar of Cincinnati, and of the judges of the Supreme Court of Ohio, and of the Secretary of State. It is doubtless fair to those gentlemen to conclude that they did not know what they were about when they gave their recommendations. But the fact that they gave them, goes to show that it is not always safe to judge a book by the recommendations it has received.

The fact is no one has a right to express an opinion about a book until he has examined it with reasonable throughness, and not then, unless he is concious of having an opinion, intelligent and well grounded, as to its merits.

The Missouri Constitutional Convention.

While the important work of this body is in progress, and the constitution to be submitted to the people is still within the control of the convention and capable of alteration, a few words of candid criticism of that portion upon which they have for the present agreed, would not be out of place. It is a matter of no little interest to the people of this state, and especially to the legal fraternity who are so largely represented in the convention, that this important production should be a fair expression, not only of the political sentiment of the state, but that it should also serve as an illustration of the wisdom, culture and learning of our people.

The very first section of the new bill of rights, as reported in No. 22 CENTRAL LAW JOURNAL (*ante* 342), either contradicts itself by the time it reaches the first semicolon, or announces a startling doctrine that never can meet with popular approbation: "That all political power is *vested in* and *derive*

from the people." If *all* political power has been derived from the people, they have none left. Where is it? Who derived it from the people, and what have they done with it? If by saying that power "is vested," etc., means that the investment still continues; that it remains vested in the people, then it is a contradiction to follow that assertion by saying that it is "derived from" those in whom it was vested. It is difficult to believe that so patriotic an assemblage of men, who seem so eager to crown the fundamental law of the state with fourth of July orations; whose mouths are always filled with popular expressions, should seriously intend to say that the people of the state have been shorn of their political power. At least not *all* of it. In fact the next section expressly negatives such a conclusion. The remaining portion of this first seetion is badly expressed. "Government of right originates from," etc., is bad; and, "instituted solely for the good of the whole," is execrable. The section as originally reported was far more accurately and logically worded. If it did not adequately express the sentiment of the convention, it might have been altered, and reduced to even fewer words, and still have given better expression to the idea intended to be conveyed. It would have been better thus: "That all political power is vested in the people; that all governmental authority is derived from the people, and should be exercised by those to whom it is delegated for the good of the people." This would admit of the employment of the word "people" as often as most patriotic hearts could wish, would serve as an admirable embellishment to the dry legal discussion of constitutional questions, and at the same time be consistent with itself.

The second section cuts us loose entirely from the control of the national government, by the time it reaches the first semicolon, and then tries to patch up the fracture by acknowledging our subjection to the constitution of the United States afterwards. It declares in so many words that the people of the state would have a right to "alter and abolish," not only their constitution, but the "form of government." The right of revolution is one of those principles that is admitted by all our statesmen to exist; but it is not deemed wise or sagacious to give it expression in solemn state papers. The *form* of government which the United States constitution guarantees to us, is *republican*. To change the *form* of our state government, might be done by substituting a monarchy, an aristocracy, an oligarchy, a theocracy, or a pure democracy, and then it would become the constitutional duty of Congress to interfere for the purpose of guaranteeing to us "a *republican* form of government." Const. U. S., art. iv., § 4. The last sentence of this section is an assumption of absolute control over a matter with which state governments have nothing to do, except as prescribed by the national constitution. It says:

"The legislature is not authorized to adopt, nor will the people of the state ever assent to, any amendment or change of the constitution of the United States, which may in anywise impair the right of local self-government belonging to the people of this state."

Suppose the legislature should adopt an amendment to the national constitution which might be construed to "impair the right of local self-government," etc., what sort of question would it be, whether the amendment had that effect or not? How would the question arise, and before what tribunal would it be determined? Article V. of the constitution provides the manner in which amendments to the constitution shall be proposed by Congress, and how those amendments shall be ratified, subject to alterations in the mode of ratification by Congress. The state legislatures are made the judges of the amendments, and no state convention can limit or restrict the discretion with which they are clothed. The attempt in this direction will be found as nugatory as the effort to foretell what the people will ever assent to.

Frothy sentiment should not find a place in the most solemn act of legislation the representatives of the people are ever called upon to exercise. Meaningless declarations of abstract doctrines should be excluded. All redundancies, and all mere verbiage should be suppressed. There should be a careful avoidance of "vain repetitions."

This convention does not enter upon its grand career, backed by such an immense vote of confidence, as to warrant it in attempting to reconstruct the map of the hemisphere, or to arrange the balance of power of Europe.

It would be a source of regret if, after all the expense and trouble of holding this convention, they should not give us such a constitution as we could adopt.

KANSAS CITY, June 8, 1875. W. P. W.

Responsibility for Literary Criticism.

The Albany Law Journal, referring to the fact that the house of James Cockcroft & Co., of New York, recently reproduced Sir William Forsyth's book, entitled "Hortensius, Duty and Office of an Advocate," under the new name of "History of Lawyers, Ancient and Modern," without any explanations, and that the same house also published Stephen's "Adventures of an Attorney in Search of Practice," accrediting it to Samuel Warren, says: "Such practices as these deserve the severest condemnation, not only of the law publishers, but of the entire profession. It is a miserable piece of trickery." Our Albany neighbor did not know that by using this language it has probably purchased the costly luxury of an action for libel. Such we fear is the case. After printing our review of "The History of Lawyers, Ancient and Modern," our publishers received the following polite note from a legal gentleman in New York City, the italics in which are ours:

"NEW YORK, May 13, 1875.

MESSRS. SOULE, THOMAS & WENTWORTH:

GENTLEMEN:—James Cockcroft & Company have submitted to me an article appearing in your CENTRAL LAW JOURNAL of May 7th, purporting to be a criticism on a book recently published by them, entitled "The History of Lawyers, Ancient and Modern." In my opinion the article is libelous. They have submitted to me conclusive evidence of its falsity, and, considering as they do, that a judicial investigation is necessary, have left the matter in my hands for prosecution. *Desiring to save both yourselves and Cockcroft & Co. unnecessary costs and expenses*, I write to ask you whether you will authorize some lawyer in this city to appear for you, or whether you will compel us to publish summons against you as provided by our code.

"Yours respectfully, —— ——."

When we read this letter, we were struck by two things: 1. The facility with which Cockcroft & Co. could submit to their lawyer "conclusive evidence" of the falsity of an article, when we had lying on our table at that moment conclu-

sive evidence of its truth. 2. The noble generosity which could inspire in the bosom of a lawyer, whose clients were smarting under so deep a wrong, the desire to save to the very men who had inflicted that wrong "unnecessary costs and expenses." To borrow an illustration from the celebrated judgment in Searle v. Adams, 3 Kansas, 515, it was as transparent as the soup of which Oliver Twist implored an additional supply, that this confiding limb of the law was resorting to a subterfuge in order to get our publishers to acknowledge the jurisdiction of a New York court over their persons.

Our publishers were so cold, calculating and ungrateful, that they declined to accede to this generous request, and left our kind friend to cudgel his brains to see if he could not, by some other means, get them into his net. At last a summons and petition were served on one of the members of this house, *in Saint Louis*, of which the following are copies:

Supreme Court, City and County of New York.

JAMES COCKCROFT & COMPANY, *Plaintiff*, *against* CHARLES C. SOULE, FRANK H. THOMAS, AND CHARLES E. WENTWORTH, *Defendants*. } Summons.—For Relief.

To the defendants and each of them: You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office, number —— ——, in the city of New York, —— —— within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the *plaintiff* in this action will apply to the court for the relief demanded in the complaint.

—— ——,

Dated N. Y. May 27th, 1875. Plaintiff's Attorney.

To the defendants and each of them: Take notice that the summons and complaint in this action, of which the annexed are copies, were filed in the office of the clerk of the city and county of New York, state of New York, in the 29th day of May, 1875, at the clerk's office in the city hall of said city.

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Dated N. Y., May 29, 1875. Plaintiff's Attorney.

Supreme Court, City and County of New York.

JAMES COCKCROFT & COMPANY, *Plaintiff*, *against* CHARLES C. SOULE, FRANK H. THOMAS AND CHARLES E. WENTWORTH, *Defendants*.

The complaint of the plaintiff shows:

I. That at all times hereinafter mentioned the plaintiff was and still is a corporation, duly created and organized under the laws of the state of New York and carrying on business in the city of New York in publishing works upon legal topics and other publishing business.

II. That at all times hereinafter mentioned the defendants were and still are partners transacting business as publishers in the city of St. Louis, state of Missouri, under the firm name and style of Soule, Thomas & Wentworth.

III. That the plaintiff prior to the time of the commission of grievances hereinafter mentioned had always maintained a good reputation and credit, had never been guilty of any fraud, deceit, trickery, forgery, or any of the offences charged against it in the libel hereinafter set forth, nor until the publication thereof was the plaintiff ever suspected of being so guilty.

IV. That the business of the plaintiff as publisher has always depended largely on the good reputation and credit of the plaintiff, on the confidence reposed in the plaintiff by its customers and the public in consequence thereof.

V. That at all times hereinafter mentioned the defendants were the proprietors and publishers of a certain legal journal published at the city of St. Louis in the state of Missouri, known as "THE CENTRAL LAW JOURNAL."

VI. That on or about the seventh day of May, 1875, the defendants maliciously published concerning the plaintiff in the said newspaper at the said city of St. Louis and circulated and published the same in the city and state of New York a certain article containing the false defamatory matter following:

"THE HISTORY OF LAWYERS, ANCIENT AND MODERN. By WILLIAM FORSYTH, author of 'History of Trial by Jury,' etc. New York: James Cockcroft & Co. 1875.

"This handsome volume, bound in cloth, and uniform with the late editions of Campbell's Lives of the Chief Justices, from the same publishers, will doubtless be heartily welcomed and largely read by the profession in this country. The reputation of the author is already well established by his other works, and the charming style and interesting matter of the present work will commend it to all readers, lay and professional, into whose hands it may fall. The author extends his researches far back into the times of the Roman Republic, and the 'palmy days of Greece,' for bits of history and biography relating to the ancient and honorable profession, and traces its growth down through all the ages that have gone, to the present time. The ancient forms and practice in the conduct of trials; the rules of etiquette and evidence which obtained; the styles of forsenic eloquence which were adopted; the officers and appendages of the courts of justice; and the modes of procedure which existed in the olden time, are all pleasantly and gracefully portrayed. Not the least interesting passages in the book are the biographical sketches of many of the noted advocates of Greece and Rome; their manner, their acquirements and their successes. Accounts of celebrated trials are frequent and well-written. For 'summer reading,' during the 'long vacation,' no more entertaining book could have been presented to the profession; while to the student at law, the information contained in its pages will be found invaluable.

"Our readers must not, however, suppose that the book is a new one by any means. It was first published in London, by Murray, 1849, under the title of 'Hortensius; Duty and Office of an Advocate.'

"The publishers have apparently assumed to improve upon the author, and have taken the liberty of reprinting his book under a new name. Of course this can work no injury to the intrinsic value of the book, but it certainly does the publishers no credit, but rather the reverse; for it has the appearance of an effort to palm off the book upon the public as a *new work, prepared expressly for them* by the distinguished author. The bungling manner with which the thing is done, is almost as bad as the act itself; for on page 130, of this edition, the author says: 'Of the more immediate contemporaries of Cicero, no advocate approached him in reputation so nearly as Hortensius; *and as his name has been chosen to give the title to the present work*, we may indulge in some detail of his biography.'

"Thus it appears that this attempt to palm off an old book as a new one does not even possess the respectability of a skillful forgery; for the text of the book itself is inadvertently left unaltered to accuse the trickery which could attempt such a fraud upon an enlightened and honorable profession.

"Messrs. Cockcroft & Co. have, in this instance, however, been kind enough to allow the name of the learned author of Hortensius, Mr. Forsyth, to stand on the title page of his book, and have correctly reproduced his preface, discreetly omitting, however, the *date*. They were not so kind to Sir G. Stephen, when they recently reprinted his most excellent and readable little book, 'Adventures of an Attorney in Search of Practice,' accrediting it to Samuel Warren, an author much more widely known in this country. We have long entertained the candid and conscientious conviction that those American publishers (we do not now refer to the publishers of the volume before us) who are in the habit of reprinting the works of English authors without paying them an adequate copyright, because the state of the law permits them to do so, are, in the eye of justice and sound morals, no better than horsethieves, and as little deserving of recognition among gentlemen. Practices like the present, while perhaps not equally injurious to individuals, are equally calculated to bring us into disrepute among honest foreigners, and to make American gentlemen ashamed to look in the face their cousins on the other side of the Atlantic.

"What we feel obliged to say in this instance is said more in sorrow than in anger, and with the sincere desire of doing the enterprising publishers of the book before us a service. We venture to suggest to them that no well-read person can long be deceived by such practices, and that they grossly misinterpret the sentiments of the profession to which they chiefly look for patronage, if they suppose that such devices can be practiced upon them without condemnation."

VII. That defendant published said article with intent to charge the plaintiff with an effort to palm off the book therein described as a new work prepared expressly for them by the author; that said defendants further intended to charge this plaintiff with forgery and fraud.

VIII. That by reason of premises the plaintiff has been injured in its reputation and credit to its damage of Five Thousand Dollars.

Wherefore the plaintiff demands judgment against the defendants for the

sum of Five Thousand Dollars with interest on the recovery, from the seventh day of May, 1875, together with the costs of this action.

———. ———.

Plaintiff's Attorney.

City and County of New York, ss.

James Cockcroft being duly sworn says:

I am the president of the above-mentioned corporation; the facts stated in the foregoing complaint are true of my own knowledge, except as to the matters therein stated on information and belief, and as to those matters I believe it to be true. The reason why this verification is not made by the plaintiff is, that it is a corporation. I am an officer of the same, to-wit, president thereof. My knowledge is derived from having inspected the publication referred to in the complaint, and from a personal knowledge of the plaintiff and defendants, and the grounds of my belief are information communicated to me by the defendants.

JAMES COCKCROFT.

Sworn to, etc.

If this suit had been commenced in a court which could possibly assert jurisdiction over the persons of the publishers of this journal, it would be unprofessional to enter upon a discussion of the merits of the questions in these columns. Moreover, so far as it is a private matter between two publishing houses, it can have very little interest for our readers. But so far as it involves the question how far a law journal may go in discharging a duty which it owes to its readers, by exposing literary frauds and forgeries which are offered to them as genuine, it is a question of general public interest. The publishers of this journal desire to state distinctly that they are quite willing and ready to be instructed as to their duty in this regard by a court of competent jurisdiction. Neither they nor the editor of this journal have any sympathy with the dishonest clap-trap of that portion of the press which would shield a newspaper from responsibility for a wanton injury to the reputation of a citizen, under the specious pretence of preserving the "liberty of the press." The publishers of newspapers should not be indulged in any liberty which is denied to other citizens. Neither they nor any one else should be permitted wantonly to inflict injuries upon other persons without responding in damages. The idea that newspapers should be a law unto themselves is intolerable. Those who assume the great responsibility of publishing a newspaper which circulates among many thousands of readers, should be held to a just accountability, not only for *malicious* but also for *negligent* injuries inflicted through this agency upon the reputations of others. But where a law-publishing house garbles the works of distinguished writers, and offers them to the profession under fictitious names, and ascribed to authors who did not write them, with the manifest intent of deceiving the profession as to their real character, a journal whose function is the criticism of literary works, which would observe the perpetration of such a fraud, and suffer itself to be bullied into silence, would be deserving of universal contempt.

Of What the Court Will Take Judicial Notice.*

In my notes upon pleadings, I have attempted to classify most matters of which the court will take judicial notice. I have felt that I might thereby aid young lawyers, both in presenting evidence and in drawing pleadings, keeping in view the rule made imperative by the code, that the ultimate facts to be established by the evidence must be pleaded, and that all facts pleaded must, if denied, be proved. This of course does not apply to the Missouri statutory action of ejectment, in which there is often much to be proved, although no fact is pleaded which pertains to the rights of the parties.

The old rule of pleading now to be considered, and which is also contained in the statute, is that,

MATTERS SHOULD NOT BE STATED OF WHICH THE COURT WILL TAKE JUDICIAL NOTICE.

It becomes at once the duty of the attorney, as well in drawing his pleadings as in deciding upon the production of evidence, to enquire of what matters the court will take judicial notice. And they will take notice.

1. *Of the existence, relations and symbols of civilized nations.*—The doctrine under this head will be best given in the language of section four of the first volume of Greenleaf's Evidence. "All civilized nations, being alike members of the great family of sovereignties, may well be supposed to recognize each other's existence, and general public and external relations. The usual and appropriate symbols of nationality and sovereignty are the national flag and seal. Every sovereign, therefore, recognizes, and of course the public functionaries of every nation take notice of the existence and titles of the other sovereign powers in the civilized world, their respective flags, and their seals of state. Public acts, decrees and judgments, exemplified under this seal, are received as true and genuine, it being the highest evidence of their character. If, however, upon a civil war in any country, one part of the nation shall separate itself from the other, and establish for itself an independent government, the newly formed nation can not, without proof, be recognized as such by the judicial tribunals of other nations, until it has been acknowledged by the sovereign power under which those tribunals are constituted, the first act of recognition belonging to the executive function. But though the seal of the new power prior to such acknowledgment is not permitted to prove itself, yet it may be proved as a fact by other competent testimony. And the existence of such unacknowledged government or state, may, in like manner be proved; the rule being that if a body of persons assemble together to protect themselves, and support their own independence, make laws, and have courts of justice, this is evidence of their being a state."

No averment should therefore be made in regard to the existence, general, public and external relations and symbols of nations recognized as such, though, as to unacknowledged states, they must be pleaded and proved as facts. Grissari v. Clement, 3 Bing. 438.

2. *Laws.*—The law of nations, or international law, and the general customs and usuages of merchants, or the law-merchant, are known and acknowledged throughout the world (1 Greenl § 5), are part of the public law of every state, and are not facts to be pleaded and proved. This, though true as a general proposition, must refer only to such as have been incorporated with the law of the land. 1 Phillips' Ev. ch. x. § 1. The particular laws of a foreign state bearing upon the subject, as the allowance of days of grace, will not be judicially noticed. Bowen v. Newall, 13 N. Y. 290. Mr. Greenleaf says that ecclesiastical as well as civil laws are thus noticed, but this can be true only of such as are part of the law of the land,

*The substance of this article will appear in a work on Code Pleading which is being prepared by Hon. P. Bliss, late a Judge of the Supreme Court of Missouri, and Dean of the Law Faculty of the University of Missouri.

and in the United States, and in England, as to churches not sustained and governed by civil authority, regulations, though secular in their character, must be treated as the rules and regulations of other voluntary associations or private corporations. Those, however, pertaining to civil rights and obligations, though in England administered by ecclesiastical courts, as of marriage and divorce, of the settlement of the estates of decedents, etc., are part of the public law, and will be taken notice of as such.

The courts will take judicial notice of the common law of England, and of such English statutes within the several states as they have declared to be in force. All other statutes are foreign. The common law was brought to the original colonies; was retained by them after they passed from under British jurisdiction; was extended to the sparsely settled and unsettled portions of the country belonging to the different states, and have been adopted in those states, except Louisiana, whose territory was acquired from other powers. These facts of public, domestic, legal history are judicially known. The common law, through all its changes, other than by statutes, is, by a convenient fiction, supposed to be always the same. Hence we do not enquire what, upon a given question, the law was held to be when first domiciled or adopted, but courts seek light from all sources; will call to their aid the decisions of foreign common law courts, as well as those of their own, and when at a loss, will not repel aid from other systems of jurisprudence. It is thus the common law is enriched and perfected. A departure, then, in the courts of England, or in those of other states, from the received understanding in regard to some doctrine of the common law, or modification of the old view, is not a new or a foreign law, but the old unchangeable common law as understood in the given court, and the court will weigh the reasons for such departure or modification, and decide, or rather take judicial notice of what the common law is, either as thus apparently changed, or as before understood. But reasons that produce seeming changes in one court, fail in another, hence certain doctrines of the common law are held differently in different jurisdictions. And besides, the common law is nowhere adopted absolutely and in all its parts, but only as adapted to our condition and circumstances. Thus in most of the western states, wild and unenclosed lands are held to be so far subject to rights of common, that cattle grazing upon them are not trespassers, and the owner, to secure sole enjoyment of his land, must enclose it. And in California and Colorado, the common law concerning the right of riparian owners in regard to water courses is ignored, and rules adopted analogous to the law pertaining to the ownership of animals *feræ naturæ*. Water is essential to mining and irrigation, and for these purposes, the common law doctrine would render its use very limited or impossible. The question will then arise, when a party seeks the protection of the unwritten law of a foreign state, which has adopted the common law differing from that of the forum, whether it is a foreign law to be pleaded and proved. Courts assume, in the absence of evidence, that the common or unwritten law of another state is the same as its own (Holmes v. Broughton, 10 Wendall, 75; Cox v. Morrow, 14 Ark. 603; Everett v. Thompson, 15 Ala. 678; 2 Phil. Ev. 4 Am. Ed. 429–30, C. & H. n. 413), and will take notice that common law felonies are crimes everywhere. Poe v. Grever, 3 Sn. (Tenn.) 668; Bundy v. Hart, 46 Mo. p. 463. If the laws differ they must be proved as facts (2 Phil. Ev. C. & H. n. 433), and must be pleaded. There can, upon principle, be no difference in this respect between the unwritten and statutory law.*

Public domestic statutes, whether repealed or still in force, are judicially noticed and should not be pleaded. The rule though a general, was not a universal one in common law pleading, for we find certain declarations charging that the act complained of was contrary to the form of the statute in such case made and provided, with the averment that by virtue of the statute an action has accrued, or words equivalent. 2 Chitty Pl. 493, *et seq.* The rule as applied to public statutes was, that ordinarily and where the statute was remedial, although the liability was created by it, it sufficed to state facts which brought the party within its provisions, but if it was penal it must be counted on, *i. e.*, expressly referred to as above. The rule was stated in New York, in Shaw v. Tobias, 3 N. Y. 188, shortly before the adoption of the new system. The action was upon a replevin bond taken under the statute, and the declaration was objected to as not averring that it was taken in pursuance of the statute. The objection was overruled, the court giving the general rule now being considered, and holding it to be unnecessary to plead a public statute, but adding that "in criminal prosecutions for an offence created by an act of the legislature, a reference to the statute is required for the purpose of informing the defendant distinctly of the nature and character of the offence; and so in penal actions founded on a statute, for substantially the same reason." These were actions of debt on statute, and the rule requiring a reference to the statute as above, although a matter of form, was always enforced.

It is not believed that under the code there is any more necessity of referring to a public statute in penal than in other actions. See Sedgwick on Stat. and Con. Law, p. 113–14. All mere forms are abolished, and this was a formality merely. Also the court takes judicial notice of public statutes, and the rule though old, has become statutory, that matters of which judicial notice is taken need not be stated. There is also an express provision in the Missouri code, that "no allegation shall be made in a pleading which the law does not require to be proved" (W. S. 1017, § 18), which gives emphasis to the rule that matters shall not be pleaded of which the court will take judicial notice, *i. e.*, which need not be proved. This clause is not usually found in other codes of procedure, but it is as clearly implied as though expressly stated.

The New York statutory form of counting upon a penal statute can not be followed in other states. The revised statutes of 1830 (2 Rev. Stat. 482, § 10; 2 Stat. at Large, 504), authorized the pleader, in actions of debt for a statutory penalty, to allege that the defendant is indebted in its amount to the person for whose use the penalty is given according to the provisions of the statute concerning, etc., giving the section, title and chapter, or referring to it by other similar terms. The supreme court (The People v. Bennett, 5 Abb.

*But the courts of Louisiana take judicial notice that the common law prevails in other states. Copley v. Sanford, 2 La. Ann. 335; Kling v. Sejour, 4 Id. 129. And will look for information to the English reports which are authority in those states. (Young v. Templeton, 4 La. Ann. 254), also of all military orders affecting courts, issued by the military governor, while New Orleans was held by United States troops. 18 La. Ann. 497, Id. 656; 20 Id. 141.

Pr. 384), has held that this statute is not repealed by the code, contrary to its holding in a previous case. Moorehouse v. Crilly, 8 How. Pr. 431.

Another exception to the mode of pleading general statutes, is made in California where a party is authorized to plead the statute of limitations, by stating generally that the cause of action is barred by sec. —— of the code, etc. Cal. Code of C. P. § 455.

But courts will not take judicial notice of the existance or provisions of private statutes or of foreign laws or statutes (2 Phil. Ev. 6 Am. Ed. 428; C. & H. n. 413, and cases cited), hence they are facts to be pleaded and proved.* A private statute is such as concerns a particular species or person. Bouvier Dic. Statute. Statutes are not private because they are local, and one in its nature private will be deemed public if so declared by the legislature. Ibid. A public act has been defined by the Supreme Court of Indiana and Maine, to be one which extends equally to all persons within the territory covered by its provisions, and that it need not be general. Levy v. State, 6 Ind. 281; Pierce v. Kimball, 9 Me. 54. Thus an act giving the authorities of a town power to stop the sale of ardent spirits, is a public one (Levy v. State), and one confering certain jurisdiction upon a particular county court (Meshler v. Vandoren, 16 Wis. 319), and in relation to the survey of timber in a county (Pierce v. Kimball, 9 Me. 54), or for the preservation of certain fish in a river. 5 Mass. 268. A city charter would seem to be within this definition, (State v. Murfreesboro, 11 Hum. (Tenn.) 217), also the incorporation of a school district covering an area of territory and exclusive within it.

In England charters are not statutes, but grants by the king, and as to statutes and facts, the scope of judicial knowledge is more restricted than with us. See cases cited on p. 32, Sedgwick on Con. & Stat. Law and Ch. x, § 1, Phillips' Ev. In this country, in addition to those that come within the above definition of a public act, there are many others that concern distinctly particular persons, but, as affecting the public, are treated as public statutes. Among these, are acts relating to banks (Douglass v. Bank, etc., 1 Mo. 24; Bank, etc. v. Smedes, 3 Cow. 662; Youngs v. Bank, etc., 4 Cranch, U. S. 384; Owen v. State, 5 Sn. (Tenn.) 493), and all acts creating corporations, whether sole or aggregate (Portsmouth L. Co. v. Watson, 10 Mass. 91), also a joint resolution imposing a particular duty upon a public officer (The State v. Delesdenier, 7 Texas, 76), and a legislative grant to individuals, of part of the public domain in Maryland, affecting rights of fishery and navigation. Hammond v. Inloes, 4 Md. p. 172. In Kentucky an act incorporating an education society (Collier v. Bap. Ed. Soc., 8 B. Mon. 68), and an act establishing a town (Halbert v. Skyles, 1 A. K. Mar. 368), were called private acts, and, as it was not required to plead private acts, it was held that the court took judicial notice of them.

In noticing a public statute, the court will take the best mode of advising itself, and usually the published volumes of acts of the legislature suffices, but the original act in the office of the secretary of state is the ultimate resort, and the court will look to it for the purpose of correcting an error in the publication. Clare v. State, 5 Iowa, 509. In New York certain acts of incorporation require a two-thirds vote of the legislature, and a certificate to the enrolled copy, stating whether the act was passed by a majority or by a two-thirds vote. This certificate was not attached to certain laws as published, and it was held that the courts would take notice whether a statute published as having passed contained the proper certificate. 1 Denio, 11; 2 Id. 101.*

There is little danger of mistake as to foreign statutes, that is, those of other states and territories and of foreign countries. They, or such parts of them as are necessary to be understood, must be set out in the pleadings and proved like other facts. There is, however, an apparent exception, in the fact that courts will take judicial notice of such laws and statutes of other states and countries, as are operative within their jurisdiction. Thus the courts of Kentucky take judicial notice of the laws of Virginia, common to the two states before their separation (Delano v. Joplin, 1 Litt. Ky. 117 and 417), and those of Indiana, of certain statutes of Virginia in regard to a tract of land in the state called the Illinois grant, concerning which the right to legislate was reserved in its release to the United States. Hawthorne v. Doe, 1 Blackf. 157. The courts of California, also, judicially know that San Francisco, under its former government, was a Pueblo, its powers, rights, general boundary and jurisdiction (Payne v. Treadwell, 16 Cal. 220), and those of Missouri, of the laws of France and Spain, while under their dominion (Chouteau v. Pierre, 9 Mo. 3; Anderson v. Biddle, Id. 581), and so will the federal courts (United States v. Turner, 11 Howard, 663). Upon the same principle, Tennessee courts will take notice of North Carolina grants. Richards v. Hicks, 1 Tenn. 393.

But while the several states are so far foreign to each other that the statutes of one state can only be brought to the knowledge of the courts of the other states, as facts, yet their relation to the United States is such that the state courts will take judicial notice of the public statutes of the United States (2 Phil. Ev. 4 Am. Ed. 429; C. and H. n. 413, and cases cited; Semple v. Hays, 27 Cal. 162; Dickinson v. Bender, 30 Ill. 279; Wright v. Hawkins, 28 Texas, 452; Papin v.

* It seems not to be necessary in Virginia to plead a private statute, although the court will not take judicial notice of it, as of public acts. Legrand v. Sidney College, 5 Munf. (Va.) 324. Nor is it in Kentucky. Collier v. Bap. Ed. Soc., 8 B. Mon. 68; Halbert v. Skyles, 1 A. K. Marshall, 368. And in Georgia, (Herschfeld v. Dexel, 12 Ga. 582), and Vermont, (Mid. College v. Overton, 1 Vt. 348), the courts have taken judicial notice of the statutes of other states.

* The right of a court to look behind a statute, and behind the official certificates of the proper officers, to see whether it was regularly adopted, has been sustained by some courts. In the People v. Mahoney, 13 Mich., page 492, the court examined the journals of the legislature, in order to decide whether the constitutional requirements had been followed in a certain enactment. Among the authorities cited to sustain this right were 1 Denio, 11 and 2 Id. 101, which did not go so far, the court in those cases only holding that it might go back of the published volume of statutes, and see whether the specific acts filed with the secretary of state, contained the certificate required by law, to-wit: that they had been adopted by a two-thirds vote, and that, if there was no such certificate, they were not legal enactments. In Board, etc., v. Heman, 2 Minn. 336, the court went behind the statute and inspected the proceedings of the legislature, and in Colman v. Dobbins, 8 Ind. 156, did the same. But in Auditor v. Brown, 30 Ind. 514, the question is considered at length, and the court overruling Colman v. Dobbins, refused to go behind a properly certified statute and enquire into the regularity of its adoption by the legislature, and the court of appeals in New York (People v. Devlin, 33 N. Y. 269), have taken the same view. The absolute verity of a statute properly certified, is held in Pa. R. R. Co. v. Gormor, 23 Mo. 353; Duncomb v Prindle, 12 Iowa, 1; Eld. v. Gorham, 20 Conn. 8; Faulk v. Fleming, 13 Md. 392, and of an act of Parliament, in King v. Arundel, Hobart's R. 109,

Ryan, 32 Mo. 21). and the courts of the United States, on the other hand, of the laws and jurisprudence of all the states and territories. 2 Phil. Ev. Id. Id.; Jasper v. Porter, 2 McLean, 579; Jones v. Hays, 4 Id. 531; Morrel v. Dawson, 1 Hemp. 563.

[*Concluded next week.*]

Municipal Subscription to Railroads.

AMOS WOODWARD v. BOARD OF SUPERVISORS OF CALHOUN COUNTY.

In the District Court of United States for the Northern District of Mississippi, December Term, 1874.

Before Hon. ROBERT A. HILL, District Judge.

1. **Power of Legislature to authorize Municipal Aid to Railways.**—It is now too well settled to be controverted, that the legislature may authorize a county or other municipal corporation to aid in the building of a railway in which the inhabitants are interested; and that such authority may be given with or without the assent of the qualified electors of such municipality, unless there be some provision in the constitution denying or limiting this power.

2. **Same—One Election does not exhaust Power.**—The legislature of Mississippi authorized the Board of Police of Calhoun County to subscribe for stock in a railway company, *provided*, that there should be an election first held in that county, at which the question should be submitted to the qualified electors. And the act provides that, in case said election should result favorably, the subscription should be made; and in case a majority of the votes be cast against the subscription, the same *shall not be made*. Under the act, an election was held in 1860, and a majority voted against subscription. In 1869, the board of police again submitted the question to the voters; and at that election, a majority voted for subscription: *Held*, that the first election did not exhaust the power of the board to subscribe; that the manifest meaning of the act was to authorize the subscription on an approving vote whenever it should be had; that the voters of the county, in this matter, like individuals in making similar contracts, were not bound finally by a rejection of the proposition; that circumstances might change so as to justify a change in their action; and that in acting on a proposition to subscribe, the voters might deliberate, reject at one time, and accept at another. Citing Society for Savings v. New London, 29 Conn. 174; Smith & Hall v. Clark Co., S. Ct. of Mo., 1 CENT. LAW JOURNAL, No. 1; Woods v. Lawrence Co., 1 Black, 386.

3. **Same—Change in Votes.**—Nor did it affect the validity of the second election, that by the constitution in force in 1860, only whites were allowed to vote, and that when the last election was held freedmen were legal voters.

4. **Same—Lapse of Time before the Election was Held.**—Nor is it any objection to such second election, that nine years had passed since the power to hold it was granted. Whatever might have been the effect in times of peace, the civil war which ensued soon after the power was granted, and the consequent disorganization of business, etc., in the state, justified the delay.

5. **Effect of Constitution of 1870 on Power Granted in 1860.**—The act authorizing Calhoun county to subscribe for stock in the railroad company was passed in 1860; an election was held in October, 1869, at which a majority of the voters assented to the subscription. The new constitution of the state, which prohibits the legislature from authorizing cities, counties, and towns from giving such aid unless upon assent of two-thirds of the qualified voters, was ratified by a popular vote under the reconstruction laws of Congress, on the 1st of December, 1869, and the subscription of the stock for the county was actually made on the books of the railway company, on the 1st of January, 1870; and the state was admitted to representation in Congress on the 17th of February, 1870. *Held*, that the new constitution did not apply, because, 1st, it did not abrogate prior authorities already granted by the legislature, but only prohibited the granting of such authority thereafter; 2nd, because the new constitution had not on the 1st of January, 1870, taken effect, as to that clause of it which prohibits the granting of such authorities except on terms prescribed. Citing, Cass v. Dillon, 2 Ohio St. 607; State v. Union Township, 8 Ohio, 94; State v. Sullivan Co., 51 Mo. 531; Kansas City, Etc., R. R. Co. v. Aldermen, Etc., 47 Mo. 349; State v. County Court, Etc., 48 Mo. 339; State v. Macon County, 41 Mo. 453.

6. **Constitution does not apply to Bonds issued to pay a Valid Debt.**—The said clause of the constitution in relation to municipal subscriptions, does not apply where a debt has already been created for subscription to a railway company; and the legislature might, after the new constitution went into effect, authorize a county to issue its bonds in payment of such debt—and that without submitting the question to the people.

7. **Form of Bonds—Immaterial Change in Form—Negotiability.**—The act of 1871, which authorized the issuance of the bonds to pay the county subscriptions to the railway company, directed that the bonds so issued should be made payable to "the president and directors of the railroad company, and their successors and assigns." The bonds issued were made payable to "the railroad company, or bearer." *Held*, that the power granted was sufficiently pursued, and that the bonds so issued were valid; that it was the intention of the legislature to authorize the issuance of bonds which were negotiable, and which, in the hands of innocent holders, for value, would not come under the operation of the statute which subjects innocent holders to the equities existing between the maker and the payee.

8. **Negotiable Municipal Bonds, unimpeachable.**—When negotiable municipal bonds are issued, payable out of the state, or to bearer, they are unimpeachable in the hands of a *bona fide* holder for value, if there be a law authorizing their issuance. And if the act giving the authority annexes to its exercise certain conditions, and the bonds on their face recite that these conditions have been complied with, then the municipality, on being sued on the bonds by an innocent holder for value, is estopped to deny the truth of the recital.

Mayes and *Harris & George*, for plaintiff; *H. A. Barr*, for defendant.

HILL, J.—This is an action of debt brought by the plaintiff against the defendant, to recover the amount due upon 218 coupons, upon certain bonds, issued by said board in payment of a subscription of capital stock in the Grenada, Houston & Eastern R. R. Company, which had been subscribed by said board on behalf of said county, and which coupons it is claimed are held by plaintiff as the *bona fide* owner thereof. Among other pleas pleaded to said action, are five special pleas, to which plaintiff has filed his demurrer and upon which the questions now for decision arise.

These pleas taken together, in substance state: That these bonds and coupons were issued on the first of September, 1871, in aid of the said railroad company, under the provisions of an act of the legislature of this state, approved on the 25th of March, 1871, and in payment of a subscription for $100,000 as capital stock, subscribed by said board on behalf of said county on the 1st of January, 1870, under the authority of an election, held by the voters of said county on the 25th of October, 1869, in pursuance of an order made by the board of police of said county, on the 22nd of September, 1869, and under which order said election is claimed to have been authorized by an act of the legislature of this state, approved the 10th of February, 1860. That on the 1st Monday in August, 1860, the proposition to subscribe for said capital stock, was submitted to the qualified voters of said county, at an election held in pursuance of the act of 1860, and the order of the board of police of said county, made in pursuance thereof, and was then rejected by a majority of said voters. That said rejection exhausted all authority in said board to submit said proposition to said voters, or to make any subscription of capital stock in said company. That when said act of 1860 was passed, none were intended to vote upon said proposition but white persons, who alone were the qualified voters of said county. That when said vote was taken the enfranchised freedmen had become qualified voters of said county. That before said subscription was made the present constitution was adopted, which prohibits the legislature from authorizing counties to subscribe capital stock in, or give aid to railroad companies, without the assent of two-thirds of the qualified voters of the county; and that the subscription of capital stock and the issuance of the bonds and coupons were made and issued in violation of this provision of the constitution, and void, and conferred no authority therefor. That the act of 1871, authorizing the issuance of bonds and coupons in payment of the capital stock subscribed for in said company, required that they should be made payable to the Grenada, Houston & Eastern Railroad Company, their successors and assigns, but that they were made payable to said company or bearer.

That by reason of the said several causes, the subscription for said stock and the issuance of said bonds and coupons were without authority of law, void and not binding on the defendant.

The question to be determined is whether any or all of the facts alleged in these several pleas, and admitted by the demurrer to be true, constitute a valid defence to the action.

The question is not now whether it is wise or unwise, just or unjust to compel a citizen or owner of property to become a stockholder in a corporation, and to contribute his means for its support, because a majority of the voters of the county or other municipality have by vote so determined, as it is now well settled that such may be done when authorized by the legislature.

The question is, did the legislature in this case authorize it, and were the bonds, the coupons for the interest on which the suit

is brought, issued and put in circulation in pursuance of that authority? The declaration alleges that they were, and the pleas deny it.

The pleas admit that there was an act passed in 1860, authorizing the board of police to subscribe for $100,000.00 of capital stock in the Grenada, Houston & Eastern Railroad Company, upon condition that a majority of the qualified voters of said county, at an election to be held for the purpose, should vote in favor of said subscription, but allege that the election provided for was held and the proposition rejected, which exhausted the power conferred; the demurrer admits the election and the vote adverse to the proposition, but does not admit the effect, that is, the exhaustion of the power; and this is the first question to be determined, as this is the only act of the legislature under which t is claimed the subscription was authorized. This question, and indeed all the questions which have been raised, and ably argued by the distinguished counsel on both sides upon these pleadings, are of first impression in this court, and so far as I am informed in any court in this state, are important to the holders of the bonds and coupons issued and first put circulation, to the tax-payers of Calhoun county, and to those interested in this railroad enterprise, and should be considered with all the care, aided with all the lights attainable, so as to arrive at a correct conclusion as to the rights of the parties.

The legislature might have authorized the subscription without a vote of the citizens, as there was then no constitutional inhibition, but it wisely provided that it should not be done without the assent of a majority of the voters, who should vote in the election to determine the question. That majority was not then obtained, and had the act contained any provisions either in positive terms, or from which it could reasonably be inferred that that vote should be final and conclusive, then any subsequent vote would be without authority. In construing all statutes, the true intent of the legislative mind is the thing to be ascertained, and in the ascertainment of which resort must be had to the purpose of the enactment, the benefits to be secured, and the evils to be prevented. The purpose of this legislation was to give pecuniary aid to the construction and operation of a railroad which was to pass through Calhoun county, which it was supposed would afford facilities to its citizens and develop their resources. The circumstances of the citizens might greatly change in even a short time, their ability to pay depending very much upon the amount of their marketable productions, and its price. Also the necessity of the aid which was sought might be greater at one time than at another; at one time it might have been thought the enterprise could be successful without resorting to this means; at another it must fail without it. It was authority given to the board of police to make a contract for the tax-payers of the county, provided a majority of the qualified voters assented to it, and, unless restricted like individuals, a proposition might be rejected at one time and accepted at a future time. There is no express provision that the vote taken should be conclusive, and when looking to the purpose of the act, I find nothing in it from which that inference can necessarily be drawn. I am of the opinion that the proper construction to be given to this statute is, that authority was given to the board of police to make the subscription whenever a majority of the qualified voters of the county should assent to it, by the vote of a majority of the qualified voters who should vote on the question at an election to be held, to decide upon the acceptance or rejection of the proposition.

This construction is sustained by the numerous adjudicated cases in other states upon like propositions, in some of which the proposition for subscription was made and rejected repeatedly, and then accepted, and its acceptance held binding, See Society for Savings v. New London, 29 Conn. 174; Smith & Hall v. Clark County, by Supreme Court of Mo., reported in CENTRAL LAW JOURNAL, vol. 1, No. 1. See also, Woods v. Lawrence County, 1 Black, 386.

Another objection to the validity of this election insisted on by defendant's counsel, is that when the act was passed, none but white persons were qualified voters, and that when the election was held, those formerly slaves, then freedmen, were made voters. The plea does not aver that any of them voted in the election, and as the present constitution by which they were made voters, did not take effect until after that time, I take it that they did not vote. All the votes which they had before that time cast were under the act of Congress, and confined to the special elections provided by the act; and were it otherwise, this objection is not maintainable. The act of 1860 evidently intended to embrace all the qualified voters who were such at the time the election was held. The voters constantly change by death and removals, by new accessions, by becoming of lawful age, and by immigrations at all times. And by the addition of the lately enfranchised, under the present constitution, another class was added, but when added, became as much entitled to vote as any who had preceded them. Still another objection urged, is, that more than nine years had elapsed from the passage of the act before the election was held. Whatever force there might have been in this objection, had the war not intervened and the consequent disorganization of civil government ensued, and which continued up to the time, or nearly so, when the election was held, these circumstances must be held sufficient to avoid this objection.

After a careful consideration of all the objections urged against the validity of this election, I am of the opinion that none of them are maintainable. And it must be held that the board of police was authorized to make the subscription, unless prevented by some subsequent obstacle, and which it is insisted did intervene by the adoption of the constitution submitted to the vote of the qualified electors of the state in November thereafter, and before the subscription was made, one provision of which inhibits the legislature from authorizing any county, city or town to become a stockholder, or to lend its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a special or general election to be held therein, shall assent thereto. The subscription was made January 1st, 1870, after the election was held by which the constitution was ratified by the electors of the state, but it was nugatory until the state government created by it was authorized by Congress, which was not done until after that time, on the 17th of February, 1870. So that it can not be held that this subscription is in any way affected by this provision of the constitution. But I am of opinion that this inhibition, being placed upon the legislature, was intended only to apply to the action of that body afterwards to be had, and not to any authority theretofore given, and for a very good reason. Others upon the faith of this subscription might have been induced to subscribe for stock under the belief that the enterprise would be thus rendered successful. Contracts might have been entered into upon the faith of the subscription; but not so with regard to subscriptions of stock afterwards authorized, this will further appear from the following (the 15th) section of the constitution which inhibits the sale of lottery tickets and further inhibits the drawing of any lottery theretofore authorized, or the sale of lottery tickets. This section is self-executing; the 14th section is not. If it had been intended to apply to subscriptions before that time authorized, no reason can be perceived why it was not expressed. I am satisfied that this provision can not be made applicable to this subscription; and this conclusion is sustained by a number of adjudications by the supreme courts of our sister states. See on this point, Cass v. Dillon, 2 Ohio, 609; The State *et al.* v. Union Township, 8 Ohio St. 398; State *et al.* v. County Court of Sullivan County, 51 Mo. 531; The Kansas City, St. Joseph and Council Bluffs R. R. Co. v. Alderman, 47 Mo. 349; State *et al.* v. Nodaway County Court, 48 Mo. 339; and State *et al.*

v. Macon County, 41 Mo. 453. I am, therefore, compelled to the conclusion that no valid objection is shown against this subscription. The next, and not less important question, is, were these bonds and coupons authorized by law to be issued, and are they of binding force upon the defendant as the representative of the taxpayers of Calhoun county? To make them so obligatory they must have been issued by legislative authority. This authority is claimed to have been given by the 4th section of an act passed March 20th, 1871, entitled an act to amend an act entitled an act to aid in the construction of the Grenada, Houston and Eastern R. R., approved February 10th, 1860, which reads as follows: "That it shall and may be lawful for the board of supervisors of any county which shall have voted a tax as provided by this act or of an act to which this act is amendatory, to issue bonds due and payable at such time or times as said board of supervisors may deem best for the tax-payers of their respective counties, not to extend beyond ten years from the date of their issuance, for such sums as said boards of supervisors may deem necessary to meet, pay off and discharge the subscriptions of said counties, respectively, for capital stock in the Grenada, Houston and Eastern Railroad Company, which have been, or which may hereafter be subscribed by said boards of supervisors, or by the boards of police (as the case may be) respectively, not to exceed the total sum of such stock subscriptions, which said bonds shall be signed by the president of the boards of supervisors issuing the same, and be made payable to the president and directors of the Grenada, Houston and Eastern Railroad Company, and their successors and assigns, and may be assigned, sold and conveyed with or without guarantee of payment by the said president and directors, or may be mortgaged in like manner, at their discretion, as they may think best for the company." The defendant's counsel insists that the issuance of these bonds and coupons under this act was a pledging the credit of the county of Calhoun to the company, which, by the provisions of the constitution above stated, could not he made binding upon the tax-payers of the county, unless assented to by a majority of two-thirds of the qualified voters of the county, which, it is admitted, was never procured. This was but a means provided for the payment of an obligation already incurred. The act limits the amount to be issued to a sum sufficient to pay off and discharge this obligation, and unless it changes the amount and time of payment, can work no hardship upon the tax-payers, and the plea does not allege any such change; therefore without further comment or reference to authority, I must hold this objection not well taken.

But it is insisted on behalf of defendant that the bonds and coupons were not issued as directed by this act, in this that they were directed to be made payable to the president and directors of the Grenada, Houston and Eastern Railroad Company, their successors and assigns; whereas, they were made payable to the Grenada, Houston and Eastern Railroad Company, or bearer, and that this departure created them different obligations from those directed and intended, and renders them void and of no binding obligation.

So far as the mere name of the payers, or payee of this obligation is concerned, it is sufficient if substantially the same.

It was not intended to vest the president and directors of the company, as individuals, with any interest whatever; they were the mere agents of the corporation; the corporation was intended to be the payee, and such being the case, they could be sold, transferred and assigned as though made payable to the company by its corporate name. For authority to sustain this position, see Maddox *et al* v. Graham & Knox, 2 Metcalf (Ky.), 78, and authorities therein referred to.

It is next insisted that it was the intention of the legislature that these obligations should be governed by what is known as the anti-commercial statute of this state, first passed in 1822 and continued in the codes of 1857 and 1871, by which the holder of the obligations, therein made assignable so as to vest the legal title in the assignee and allow him to sue in his own name, holds the same, subject to the same infirmities and equities as existed against the payee when the assignment was made, and that these bonds being made payable to bearer, made them commercial paper, unimpeachable in the hands of a *bona fide* holder for value and without notice of such infirmities or equities, and hence different in their effect and binding obligation, and therefore void. This question has never before been presented to me, but questions arising under this anti-commercial statute are not new either to this court or to the supreme court of the state.

The act is as follows: "All bonds, obligations, bills single, promissory notes and all other writings for the payment of money, or any other things, shall and may be assigned by endorsement, whether the same shall be made payable to the orders or assigns of the obligee or payee or not; and the assignee or endorser may sue in his own name and maintain any action which the obligee or payee might or could have sued or maintained thereon previous to assignment; and in all actions commenced or sued upon any such assigned bond or obligation, etc., the defendant shall be allowed the benefit of all want of lawful consideration, failure of consideration, payments, discounts and sets-off made or had against the same previous to the notice of the assignment, etc., in the same manner as if the same had been sued and prosecuted by the payee or obligee, and the assignee or endorsee may maintain an action against the person or persons who may have endorsed the same, as in case of inland bills of exchange."

I have, heretofore, decided, in construing this act, that it was intended to embrace such instruments only as were not before that time assignable under the laws in force in this state, so as to vest the holder with the legal title, and authorize suit thereon in the name of the assignee or endorsee, and not such instruments as before that time were negotiable and vested the legal title in the holder, with the right to sue in his own name, and in justice to the makers of such instruments reserved such equities which they might have before notice of such transfers. The obligations, the transfer of which are authorized, are such as are usually only transferred in the vicinity of their creation, and where it is an easy matter for the party desiring to take the transfer to enquire and ascertain whether there are any equities or off-sets against it. I am satisfied with this construction, and am not aware of a materially different construction having been given by the courts of the state obligatory upon this court. The High Court of Errors and Appeals in the case of Craig v. The City of Vicksburg, 2 George, 216; Stokes v. Winslow, same book, 518; Mercie v. Cotton, 5 Goe. 64; and Winstead v. Davis, 40 Miss. 785, hold that bills, bonds and promissory notes payable to bearer, were negotiable at common law and not within the statute. So is a note made payable to the order of the maker, and endorsed in blank, not embraced within this anti-commercial provision. So is a note or other obligation made payable within another state, not so embraced, but is governed by the laws of the state where payment is to be made. As a general rule obligations made for the purpose of being thrown upon the market and becoming a portion of the circulating medium of the country in commercial transactions, are usually held as unimpeachable commercial obligations. These rules, I am satisfied, will be found sustained by the elementary books and adjudicated cases. The purpose of the issuance of these bonds and coupons must be ascertained from an examination of the powers given in the act itself, and the custom of the country with reference to similar obligations issued by other corporations and municipalities. The company was authorized to sell, transfer, assign and mortgage the same as the discretion of the president and directors might deem best for the company, thus giving them an unlimited power of disposition over them to raise money, or to be used in any other way deemed most to the interest of the company.

No restriction is placed upon the board of supervisors as to the time or place of payment, except that all shall be payable within ten years from their issuance. There being no restriction as to the place of payment, no reason is shown why they should not have been made payable in the city of New York, the great money centre of this country. At the time of their issuance, as now, there was but little money in this state for such investment; consequently the bonds, to subserve their purpose, had to be sold where there was a market for them. If these obligations were properly made payable in the city of New York, where commercial law prevails, and where obligations of this character are unimpeachable in the hands of a *bona fide* holder, then the objection under consideration must fail. Or if to carry out the purpose of their issuance by making them payable to bearer, the same result must follow.

I am satisfied, after a careful consideration of the act authorizing the issuance of these obligations, and the purpose for which they were issued, that no such departure from the provisions of the statute has been made as to invalidate them. Other reasons might be stated, but those given are deemed sufficient.

According to the conclusions reached, these obligations could not be impeached if they were now held by the company, or that which has succeeded to the rights of the former company, the payees of these obligations.

But being payable in the city of New York, and payable to bearer, they are unimpeachable in the hands of a *bona fide* holder without notice, the holder being only required to know that there was legal authority for their issuance, the bonds reciting upon their face that all the acts had been substantially performed that the act of the legislature, authorizing their issuance, required. To sustain this position I refer to many decisions made by the Supreme Court of the United States upon similar obligations, from the case of The Commissioners of Knox County v. Aspinwall, 21 Howard, 543, up to the present time, embracing one or more cases at every term of that court of last resort in the nation, and binding on this court at least.

Admitting that the objections insisted upon in these pleas were sufficient to have justified the defendant or the tax-payers to have restrained by injunction the board of supervisors from issuing these bonds, or the company from using or transferring them after issued, had it been done in time, yet having acquiesced for so long a time in their issuance and transfer into the hands of *bona fide* purchasers without notice of any objection, and until after contracts had been made and labor performed, I am inclined to the opinion it is now too late to raise the objection, but upon the other grounds stated, I am satisfied the demurrer to all these special pleas must be sustained, with leave to plead over.

Sixty days allowed in which to plead.

NOTE.—The act of 1860, is as follows: "The board of police of the several counties, Yallobusha, Calhoun, etc., through which the G. H. & E. R. R. may pass, may, for their respective counties, open (*sic*) such conditions as they think proper, subscribe for capital stock not to exceed in amount two hundred thousand dollars, for any one county. *Provided, however*, that an election shall be held in the county for and on account of which stock is proposed to be subscribed by the qualified electors thereof, at the regular precincts of said county, twenty days notice of the time of holding such election, and of the amount proposed to be subscribed, and in what number of installments, being first given by the board of police; and if at said election a majority of the qualified electors voting shall be in favor of such subscription, then said board shall make such subscription for and in behalf of the county, for the amount specified by the president of said board of police, subscribing the amount so specified to the capital stock of said company, but if a majority of those voting shall be opposed to such subscription, the same shall not be made." § 1.

The clause of the new constitution, referred to, is as follows: "The legislature shall not authorize any county, city, or town, to become a stockholder in, or to lend its credit to any company, association, or corporation, unless two-thirds of the qualified voters of such county, city or town, at a special election, or regular election, to be held therein, shall assent thereto." § 14, Art. XII.

Sec. 4 of the act of 1871, is as follows: "That it shall and may be lawful for the boards of supervisors" (formerly board of police) "of any county which shall have voted a tax as provided by this act, or of the act to which this act is amendatory" (*i. e.*, act of 1860, *supra*), "to issue bonds due and payable at such time or times as said boards of supervisors may deem best for the tax-payers of their respective counties, not to extend beyond ten years from the date of issuance, for such sums as said boards of supervisors may deem necessary to meet, pay off and discharge the subscriptions of said counties, respectively, for capital stock in the G. H. & E. R. R. Co., which have been or which may hereafter be subscribed by said boards of supervisors, or by the boards of police (as the case may be), respectively, not to exceed the total sum of such stock subscriptions, which said bonds shall be signed by the president of the board of supervisors issuing the same, and be made payable to the president and directors of the G. H. & E. R. R. Co. and their successors and assigns, and may be assigned, sold and conveyed with or without guarantee of payment by the said president and directors, or may be mortgaged in like manner at their discretion, as they may deem best for the company."

Foreign Selections.

CONTRACTS PARTLY PERFORMED—POWER OF EQUITY TO RESCIND ON THE GROUND OF FRAUD.—The court of Vice-Chancellor Malins, was lately agitated for nearly a fortnight with the discussion of the question, whether equity can rescind a contract partly performed, on the ground of fraud in the performance. This question arose in the case of The Panama and South Pacific Telegraph Company v. The India Rubber and Gutta Percha Telegraph Works Company. The observation made in Onions v. Cohen, (12 L. T. Rep. N. S. 15, 2 H. and M. 361), by Lord Hatherley, ex-chancellor, then Sir W. P. Wood, V. C., that "except Gwillim v. Stone, there is no instance of a contract being delivered up to be cancelled, unless there was fraud in obtaining the contract itself," took a part of the profession by surprise. If correct, it seemed to follow that though English equity sedulously offers redress to persons induced by fraud to enter into contracts, it is unable to modify its principles, or to adjust its remedies where a contract is evaded or broken with a deliberate fraudulent intention. If correct, a person might, under a contract of sale, obtain possession of the estate, continue in enjoyment for years without paying the rent, and, because there was some defect in the title, refuse to pay the purchase-money, and yet set the unfortunate vendor at defiance; all which one party to the contract attempted to do in King v. King (1 M. and K. 442). In suits to rescind or specifically enforce contracts, the adjustment of the rights may involve, not only a multiplicity of questions at issue, but also some complication of remedy which the recent act, enabling courts of equity to give damages, has not removed. That the court is not bound to set aside every contract which it will not specifically execute, nor to decree a specific performance in every case where it will not set aside the contract, is a general proposition which scarcely needs the authority of Mortlock v. Buller (10 Ves. 292) to establish. While another observation of Lord Hatherley's in Onions v. Cohen, that if the contract is ordered to be delivered up, an action can not be brought, as the whole thing is finished, though correct as a proposition, is somewhat misleading in practice, as the order might be for cancellation of the contract, after and without prejudice to an action at law. The question of compensation and damage, in times past, has equally perplexed the learned judges in equity. In Sarnsbury v. Jones (5 M. and C. 1), Lord Cottenham remarked: "I certainly recollect the time at which there was a floating idea in the profession, that the court might afford compensation for the injury sustained by the non-performance of a contract, in the event of the primary relief for a specific performance failing, and I have formerly seen bills praying such relief." Under Lord Cairns' Act, attempts were made to revive such jurisdiction, but, as The Law Times Reports show, unsuccessfully. Should the new judicature bill ever regulate the practices of the profession, Lord Kenyon's ruling in Denton v. Stuart (1 Cox, 258), to which Lord Cottenham referred, will again be followed. These two questions, first, that

of equitable fraud or breach of duty in the execution of a contract, secondly, that of the appropriate remedy, were prominent in the case recently decided by Vice-Chancellor Malins, of Panama and South Pacific Telegraph Company v. India Rubber and Gutta Percha Telegraph Works Company. The delivery of the judgment by his Honor occupied upwards of two hours. This was partly owing to the conflict of evidence. The facts necessary to support the decree are few. The plaintiff company obtained a government concession to make a telegraph across Panama, connecting Peru with other telegraphs to New York. They then employed the defendant company to manufacture and lay the cable, payments to be made on the production of the certificate of the engineer to the plaintiff's company. After the payment of some instalments the engineer entered into a contract with the defendant company, himself to manufacture and lay the said cable. After this the plaintiff company paid sums amounting to £40,000 to the defendant company on the certificate of the engineer. Hearing of their engineer's sub contract, they brought their bill to recover the £40,000, and to obtain a rescission of the contract. Vice-Chancellor Malins commented on Randall v. Errington, 10 Ves. 423, in which Sir Will. Grant, M. R., set aside a purchase by a trustee. He then cited a passage from the judgment of Lord Chancellor Chelmsford, in The Directors of the Central Railway Company of Venezuela v. Kisch, H. L. 2 E. & I. 99; 16 L. T. Rep. N. S. 500. "In my opinion the public who are invited by a prospectus to join in any new adventure ought to have the same opportunity of judging of everything which has a material bearing on its true character, as the promoters themselves possess. It can not be too frequently or too strongly impressed upon those who, having projected any undertaking, are desirous of obtaining the co-operation of persons who have no other information than that which they choose to convey, that the utmost candor and honesty ought to characterize their published statements." Those veteran authorities, Small v. Attwood and Dobell v. Stevens, were cited, but The Imperial Mercantile Credit Association v. Coleman, was evidently the favorite of the vice-chancellor. In it he had decided that a director as an officer of the company, could not contract with it, unless he had stated not only that he had an interest in the contract, but what that interest was. Lord Chancellor Hatherly reversed the decree (L. Rep. 6 C. A. 558; 24 L. T. Rep. N. S. 290), but the House of Lords reversed the reversal, and affirmed the principle of the first decision (H. L. 6 E. & I. 201, 29 L. T. Rep. N. S. 1). The learned vice-chancellor, then cited other cases, as to the constructive fraud (of actual fraud he acquitted the engineer), and as to laches. The one most in point was Kimberley v. Dick, L. Rep. 13 Eq. An architect entered into an undertaking with his employer, that a house should be erected for a sum not exceeding £15,000, including architect's commission. and all expenses, and engaged the services of a builder, who, without being informed of the undertaking, gave an estimate on quantities given him by the architect, and entered into a contract with the employer for the completion of the work from the architect's plans, and under his superintendence for £13,000, with power for the architect to order extra works, and with a clause providing that all question between the parties under the contract, should be settled by the award of the architect. The builder filed a bill in equity, claiming to be entitled to be paid by the employer for all quantities executed by him beyond those included in the estimate, and for extra works. Lord Romilly held that the evidence showed that the architect was the agent of the employer, that his undertaking having been concealed from the builder, the arbitration clause in the contract could not be enforced, and that the plaintiff was entitled to an account for what was due to him for any work executed by him, under the architect's direction not included in the contract, and for any variations made under the architect's direction for works included in the contract. Vice-Chancellor Malins, then concluded his judgment, by saying that he must apply Lord Eldon's rule, "that purchases by persons having a confidential character must, however honest, be set aside; that in the present instance there had been no laches; that for the cable actually delivered, payment might be claimed, though the engineer's certificates could not be relied upon, but that the last payment of £40,000 must be returned.—[*The Law Times.*

A Bird's-Eye View of the Court and Counsel in the Tilton-Beecher Case.

IX.

JOHN K. PORTER.

There are few lawyers at the New York bar who have had so wide and varied an experience as ex-Judge Porter, one of the counsel for the defendant in this case.

He is a graduate of Union College, and a gentleman of culture and high attainments. In 1863, he was appointed by the governor one of the judges of the court of appeals, to fill a vacancy, and soon after was duly elected by the people for the term of eight years as judge of that court, in which position he discharged his duties with much faithfulness and ability. One of the first cases in which he took an active part, which gave him something of a reputuation, was as counsel for Horace Greeley in 1862, in an action for libel brought against that journalist by Dewitt C. Littlejohn. He also acted as counsel in behalf of the Trinity Church Corporation, a case involving extensive interests, and delivered an able argument before the senate upon the legal questions raised in that litigation. He conducted the Parish Will case, so called, in the court of appeals—acting for the family. In connection with George Ticknor Curtis he figured conspicuously in many of the suits growing out of the great ring frauds of New York City. During the time of his sitting on the bench of the court of appeals, he wrote many elaborate opinions, which evince much legal knowledge, and display a mind of analytical descrimination on the issues of law presented in the various cases.

In this world-renowned case, which for five months has dragged its slow length along, he took a limited part in its general management, but seems to have reserved his Promethean fire to use in his summing up to the jury on behalf of the defence.

On the second day of Judge Porter's address to the jury, a wag was asked by a gentleman, who was not only cross-eyed but squinted terribly, how the case was going:—"Why, as you see, Sir," was his reply.

Judge Porter's address, which lasted the greater part of five days, was largely made up of earnest appeals and invectives, and an amount of logical reasoning altogether surprising. He possesses, as evinced in this case, much trenchant, scriptural, practical and ironical power, and during his address he assumed very many theatrical attitudes, and often with clinched hands and close proximity to the plaintiff (who sat directly back of him), hurled his words of wrath at him as though he fain would demolish him by one fell swoop. Where he trying metamorphoses of Mephistopheles in satirical view, he could not have thrown more bitterness and sarcasm into his sentences than he did on this occasion. While in one moment sneering at the plaintiff and describing him as a grandiose chivalric hidalgo, in the next moment pictured him as a thing for laughter, leers and jeers.

While possessing almost the power of personation and dramatic effect of a Booth, he throws into his oratory all the play and comedy of Moliere, and the exaggeration and ludicrousness of Rabelais. Albeit many of his shafts of art and dramatic action pleased the audience at times, it had also no doubt a questionable effect upon the minds of the jury. Too much bitterness or too much ridicule often shoot beyond the mark and counteract the result which was intended. As the Sun somewhere says, in commenting upon the case and parties: A man is pretty surely and thoroughly gone to the dogs, when he has got himself so twisted in moral senses that he has confused the roads that lead to right and wrong;—so when

an advocate addresses a jury and so thoroughly twists the logic of his argument, by making more of ridicule, censure and ribaldry than analytical reasoning upon the evidence presented, it may be fairly presumed that his effort will be more or less futile.

Some of the comments of the press upon this effort evince a clearness of vision as to the happy mean, the proper line to be followed by an advocate and his province, to work a salutory result in the minds of the jury; that mere denounciation will not weigh as potently as a calm, analytical sifting of the evidence adduced. Thus the Springfield Republican remarks: "This policy of denouncing the other side as a band of totally depraved conspirators savors of an earlier and more savage age, a crueler theology, and a bitterer intolerance than are thought consistent with christian decency to-day."

Mr. Tracy, in his opening for the defence, indulged in an abundance of this kind of web and woof, and it was thought by many that to some extent he damaged the case he aimed to benefit. Such a course is apt to rebound like a boomerang. Detriment often inflicted to a case, by a too sweeping—a wholesale mode of denouncing the opposite side and his witnesses in anathemas.

Taking Rufus Choate as an example of the true type of the successful jury-lawyer, it may be remembered that he was ever guarded in the scope and limit to which he indulged in personal invectives and denunciatory epithets of the opposition, from that natural fear of the acute thinker and speaker, that it might redound to his disadvantage and injury. By-standers will not long look on and see a combatant lying prone, pummelled by the other—they soon cry out, "Hold, enough!" and so in an address overcharged with bitterness.

As an example of many of the sentences of caustic word-firing rendered, we may give the following:

> In the ordinary course of our profession the cases are very rare in which we are justified, still more rare in which we are compelled by a stern sense of duty, to speak of dishonest men as they deserve. But this is no case for compromise. If Theodore Tilton's accusation is false, if he has suborned his wife to make a false accusation, even without oath, if he has made use of a villain in Frank Moulton for the purpose of doing the common work of both in the destruction of a pure and a good and an honest man, we can not speak of them except as they deserve; and while I know that much that I have said, and more that I shall say will give pain to my client, who entertains more charitable views of all these parties than I do, I can not but believe that you in your hearts feel that it is essential to the protection of innocence hereafter, against kindred conspiracies that scoundrels like these, when they endeavor to force honest men into their services, shall be met in a spirit worthy of the occasion, and that there shall be an admonition to men hereafter who engage in enterprises like this, that it is not in a court of justice that swindling, conspiracy, and perjury are to be countenanced.

And in severely commenting upon the part taken by the "mutual friend" in this matter, he said:

> Moulton has attempted to convince you through the whole of his testimony that he was the master and that Tilton was the minion. Not so, not so. Tilton was master from the beginning. It was in his diabolical reign that all these crafty devices were wrought out with the skill of an artisan bred at Vulcan's forge. It was he, he who gave direction to Frank, and Frank Moulton's talk about his grinding Theodore Tilton to powder, and his being ready to smite him to the earth if he attempted to crucify Henry Ward Beecher, is the talk of the braggart, and the pretender, and the liar.

Rufus Choate was the acknowledged leader and champion, the *facile princeps* of the American bar, in all that goes to make up the eloquent speaker and successful advocate—a remark which we fear could hardly be applied to many in our day. Dramatic action, electrical and magnetical elements are powerful in their way, but a lack of judgment in suiting the words to the occasion, the "action to the word," often proves of little worth.

It is doubtless safer for an advocate to indulge in an abundance of ridicule, rather than an abundance of invective and personal denunciation. The human mind is swayed more by the first than the latter. Indulging largely in a ludicrous view, often illustrates to the minds of the jury the hollowness of the opponent's case.

To be in all senses successful, we imagine the speaker should be able to adapt himself and his subject-matter to the times and the occasion—and if he lack that quick perceptibility to enable him to discriminate as to the sentences to apply in a given case, he is apt to fall into the "slough of despond," and his effort come tardily off. Verily, truth and error exist together in all things.

And in this case, involving vast complications—"oddities let loose"—it has been evinced that "man's a strange animal"—as the erring Byron philosophisingly said, which may charitably be taken in palliation of the wonderful conduct of the parties immediately involved in this case. Considering the developments in the tangled web of circumstances in this case—stranger than fiction—may we not be justified in quoting the poet's words:

> Man's a strange animal and makes strange use
> Of his own nature and the various arts,
> And likes particularly to produce
> Some new experiment to show his parts;
> This is the age of oddities let loose,
> Where different talents find their different marts.

NEW YORK. BETA.

Correspondence.

PROFESSIONAL ETHICS—THE KREIS DIVORCE SUIT.

SAINT LOUIS, June 15, 1875.

EDITORS CENTRAL LAW JOURNAL:—In the Globe-Democrat of June 14th, there is a card by J. A. Beal, Esq., in which he attempts to exculpate himself in the matter of Kreis v. Kreis, from the strictures upon his professional conduct by the court, as reported in the above and other papers, and in your valuable journal of last week. He claims that great injustice was done him in the premises by the publication, and seems to insinuate, that I had taken "snap judgment" on him, in the matter of the motions, in that he says: "If I had known that action was going to be taken on the 1st of June, I would have been present, and would have exposed Reynolds in his efforts to get money I had earned and expended." In justice to your journal, and the truth of its reports, and of my professional honor, it is due you and myself to state, that all you say, is specificially based upon the affidavits and papers filed in the case, and that your report is very full, accurate and just. That as to his pretence that he had no notice of the motions, he is stared in the face by the court records, that on the day the motions were filed, he was personally served by me with notice; that the motions were pending, and of the time when they would be called on the law docket—and with the fact that he had been theretofore, discharged from the case by Mrs. Kreis; and that the money she had been induced to pay him by his nefarious practices had been demanded back. Now that he did not choose to face the music in court, he has no right known to law or humanity to cast an ungenerous fling at the character of a defenceless woman, who is guilty of no weakness but of once entrusting a cause to him, nor of complaint against

Yours Faithfully, J. C. LAWYER, att'y,
322 Chestnut Street.

Notes and Queries.

ANOTHER ANSWER TO "B."

WHEELING, W. VA., June 1st, 1875.

EDITORS CENTRAL LAW JOURNAL—GENTLEMEN:—I send you herewith a brief for the plaintiff, in the case of Bell's Admn. v. Humphrey, a case recently decided in the plaintiff's favor, by the Supreme Court of West Virginia. It will be found to bear upon the question asked by "B.," in "Notes and Queries," page 323 of the present volume of the JOURNAL.

In this case, the principal controversy was as to whether *a devise of land to executors to sell*, with direction to divide the proceeds equally among the testator's daughters, when they should reach the age of twenty-one years,

would so vest the title in the executors, that they, after all the testator's (six) daughters had attained full age, could recover the land in ejectment, from one who was a purchaser, by fee simple deeds, from four of the said daughters.

The points taken in the plaintiff's brief were all unanimously sustained by the court; holding that the devise to the executors to sell, gave, not a naked power to sell, but a trust coupled with an interest. It broke the descent to the heirs, and gave the *fee simple* to the executors, which title remains until the trust is executed by sale of the land.

If by will the executor is positively required to sell the land and divide the proceeds, although there be no devise, in terms, of the land to the executor, still it would seem that the legal estate passes to the executor. Peter v. Beverly, 10 Peters Rep. 532. See page 584. It is clearly so held in Mosby's Admr. v. Mosby's Admr., 9 Gratt. 584. If the legal estate passes to the executor, the heir's estate is only personalty, as declared by the case of Baker v. Copenbarger, 15 Ill. 103, cited by "J. W. P," page 352 of your JOURNAL. See 3 Wheaton 563, and the case of Peter v. Beverly, above cited.

As to the equitable conversion, or election by the parties beneficially interested, to take as land what is directed to be sold, or as money what is directed to be invested in land, it requires the joint election of *all* to take the land instead of money, though *any* of the parties interested may take his share of the money, which is directed to be invested in land. A court of equity, or a court having charge of an infant's estate, may elect for the infant. 1 Leading cases in equity (White and Tudor) p. 684. Harcums Admr. *et al.* v. Hudnall, 14 Gratt. 369. W. E.

POWER OF JUDGE TO INTERROGATE PRISONER.

EDINA, MO., June 9, 1875.

EDITORS CENTRAL LAW JOURNAL:—Can a judge open a plea of guilty made by a defendant in a criminal case, and proceed to interrogate him upon the *facts* included in the plea? H. W.

HOMESTEADS IN MISSOURI—SKOUTEN V. WOOD.

WARRENSBURG, MO., APRIL 26, 1875.

EDITORS CENTRAL LAW JOURNAL:—In the case of Skouten *et al.* v. Wood (Central Law Journal Vol. 2, p. 61) Judge Napton decides that where the husband dies owning a homestead in fee simple, under section five of the homestead law, the widow, where there are no minor children, takes also a fee simple estate in such homestead. Now, in case the estate did not amount to more than the widow was entitled to as a homestead, would it be absolutely necessary to go to the expense of applying to the probate court for an order, and having commissioners appointed to set off the homestead, or would a deed from the widow convey a good title to a purchaser without the homestead being set off? Yours, etc., W. W. W.

Recent Reports.

MASSACHUSETTS REPORTS, Vol. 115. CASES ARGUED AND DETERMINED IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS; MARCH—SEPTEMBER, 1874. By JOHN LATHROP, Reporter. Boston: H. O. Houghton & Co. 1875.

We have in this volume the first work of the new reporter, the last four volumes of the late reporter being still in course of preparation. The cases are printed in the order of decision, and without reference to the terms, for the sake of securing promptness in publication; but the reporter has carefully noted at the head of each case, the county wherein it arose, the dates of argument and judgment, and the names of the judges absent from the hearing. In the 600 pages of text there are reported 146 cases. The publishers, who are well-known to be among the best in the country, have performed their portion of the work with their usual excellence. One improvement may be suggested in the arrangement, viz., the use of black-letter catch-words at the head of each paragraph of the syllabus, to facilitate reference to the matters contained in the opinion. Lawyers are so over-worked, and their time is so precious, that every means should be employed to facilitate their labors; and the reading, even of the syllabus, in each case in order to learn what is decided therein, is a work of time. The use of such means as are suggested, will go far towards reconciling the members of the profession to the unnecessarily large number of volumes of reports with which they are obliged to familiarize themselves in the course of their practice.

Claim for Damages in Tort not Provable in Bankruptcy.—Zimmer v. Schleehauf, p. 52. In an action of tort for damages for slander and malicious prosecution, after verdict and before judgment, the defendant was adjudicated a bankrupt. *Held*, that such claim was not provable in the bankruptcy, and defendant was not entitled to continuance, but the plaintiff was entitled to his judgment.

Easement of Light and Air.—Keats v. Hugo, (tort for obstructing the passage of light and air). Eaton v. Evans (bill of trustees for injunction against building an obstructing wall). Salisbury v. Andrews (bill to confine building of obstructing wall to a certain height), p. 204. The grant of an easement of light and air is not implied from the grant of a house having windows overlooking land of the grantor. If the eaves of a house belonging to one person have projected over the land of another for more than twenty years, the owner of the house has no title in the land of such person under the eaves, and can not prevent him from building on the land, if he can do so without interfering with the eaves.

The court in deciding these cases has very carefully collated and learnedly discussed the leading authorities.

Delivery of Chattel by Tranfer of Carrier's Receipt.—First National Bank, etc. v. Dearborn, p. 219. The delivery by an owner of goods, of a common carrier's receipt for them, not negotiable in its nature, as a security for an advance of money, with the intention to transfer the property in the goods, is a symbolical delivering of them, and vests in the person making the advance a special property in the goods sufficient to maintain replevin against the officer who afterwards attaches them upon a writ against the general owner.

Cotton-Broker—Extent of Agency—Bill of Lading—Measure of Damages.—Stollenwerck v. Thacher, p. 224. A. the owner of cotton agreed to sell it to B., and sent it to his special agent with a bill of lading running to A. and endorsed by him in blank, with directions to hold the bill of lading until a draft drawn on B. for the price of the cotton was paid. The agent delivered the bill of lading to B. on his accepting the draft, but before payment. B. obtained the cotton from the carrier; paid the freight; and then pledged the cotton to C. for advances. *Held*, that the agent or broker was not a partner or general agent of A., and could not bind A. beyond the special instructions he received from A. by the delivery of the cotton not in accordance with such instructions; that B. acquired no title to the cotton by such delivery as against A.; and that in an action by A. against C. for the conversion of the cotton, the measure of damages was the market value of the cotton at the time of the conversion, less the freight paid by B.

Draft attached to Bill of Lading—Endorsement of Draft transfers Right of Property.—Fifth National Bank of Chicago v. Bayley, p. 228. Where a draft is drawn by the shipper of goods on the consignee, and a bill of lading to the order of the shipper and endorsed to the consignee is attached to the draft, and delivered with the draft to the bank discounting the same, such delivery transfers to the bank a special property in the goods, sufficient to enable it to maintain replevin against the shipper, and any one attaching the goods as his property; and the consignee has no right of property in the goods, nor right of possession, except upon payment of the draft to the bank. See also next case, Newcomb v. Boston and Lowell R. R., p. 230, to the same effect. Also, that where the carrier delivered such goods to the consignee and payor of the draft, he was liable in an action by the party who had made advances and held the endorsed bill of lading. See also next case, Alderman v. Eastern R. R., p. 233, to the same effect; also, that under like circumstances, a sale of the goods "to arrive" by the consignee, is void as against the party making advances on the draft, and holding the endorsed bill of lading.

Voluntary Settlement not Revokable.—Sewall Exr., v. Roberts, p. 262. A voluntary settlement fully executed can not be revoked or altered by a second settlement of the same property, in the absence of any provision in the deed of settlement reserving such power to the settler.

Livery-Stable Keeper—When Liable for Injury caused by Unsuitableness of Horse hired of Him—Horne v. Meakin, p. 326. It is the duty of a livery stable keeper to provide a horse suitable for the purpose of the hiring. It is immaterial that he did not know the horse was unsuitable. If the hirer by mistake gets a horse not intended for him, and the stable-keeper, knowing it, does not make a reasonable effort to correct the mistake, he is liable for damage arising therefrom.

Insurance Policy—Acceptance—Principal and Agent.—Monitor M. F. Ins. Co. v. Buffum, p. 343. A., the agent of the company, obtained for B. a policy, paying a cash premium, and executing a premium note in the name of B. The policy recited that B. had done this. B. received the policy without reading it, and had no knowledge of the execution of the note by the gent. *Held*, that such acceptance of the policy by B., was a ratification of the act of the agent in executing the note.

Landlord and Tenant—Repairs—Holding Over—New Tenancy.—Emmons v. Scudder, p. 367. A tenant holding over, under a new agreement for a lease express or implied, becomes tenant at will until lease executed. Evidence that the tenant used the premises as if the new lease had been executed, paying rent for and sub-letting a portion of the premises included in new agreement, but not in the old lease, is evidence of an entry under the new agreement; and the payment of the rent under protest, because repairs promised by

the landlord were not made, did not justify the landlord in changing the tenancy from a tenancy at will to one at sufferance.

Female Member of School Committee.—Peabody v. School Committee of Boston, p. 383. The city charter provides that the school committee "shall have authority to decide upon all questions relative to the qualifications, elections and returns of their members." *Held*, that the decision of the committee declaring a seat in the board vacant for want of legal election and qualification, is conclusive, and can not be revised by the court upon petition for mandamus, although the record of the board shows, as the sole reason for its decision, that the petitioner is a woman who had been chosen by a legal vote as a member from one of the wards of the city.

In a supplement the reporter gives the opinions of the justices upon the question, "under the constitution of this commonwealth, can a woman be a member of a school committee?" rendered February 20, 1874. The foregoing case was decided June 29, 1874. On June 30, 1874, the legislature passed an act entitled "An act to declare women eligible to serve as members of school committees." In the opinion mentioned, all the justices concur in deciding that nothing is contained in the constitution to prevent a woman from being such member.

Express Company — Right to Facilities for Carrying on Express Business over Objecting Railway.—Sargent v. B. and L. R. R., p. 416. A railroad corporation is not bound to furnish an expressman, who seeks to carry on his business over its road, with facilities and accommodations for so doing, and the fact that it has done so for many years is immaterial. The fact that the company desires to carry on such business over its own road is immaterial.

Stock Company — Dividend New Stock.—Rand v. Hubbell, p. 461. A corporation voted to increase the number of shares of stock, so as to allow each stockholder to increase the number of his shares one-half. The directors on the same day voted a dividend to each holder, payable within the time for taking up the new stock, and to be applied in payment thereof, and payable only to the old stockholders. *Held*, that the stock issued constituted a stock dividend; and that in the case of shares of old stock, held by a trustee, the new shares must be considered an addition to the capital of the trust fund. *Held*, also, that if such proceedings of the company were void because of non-compliance with the statute, the cash dividend declared would fall and not be liable to be claimed by a person entitled to the income from the shares of stock. See 1 CENT. L. J. p. 407.

National Bank — Rate of Interest.—Central National Bank v. Pratt, p. 539. It is within the constitutional power of Congress to fix the rate of interest which a national bank may take, and such power when exercised is exclusive of state legislation.

The provisions of U. S. Stat. of 1864, c. 106, § 30, limiting the forfeiture for making usurious charges by national banks to the interest, applies as well to banks established in the states when a rate of interest is fixed by law, as to banks in states where no rate is fixed. See also next case, Davis v. Randall, p. 547.

Statute of Limitations—Payment by Wife on Husband's Note.—Butler v. Price, p. 578. A part payment made by a wife, on her husband's promissory note, will not take the note out of the statute of limitations, in the absence of evidence that he authorized the payment.

ERRATA.—In reviewing 24 Ohio State Reports (p. 353), it was inadvertently stated that the Table of Cases was defective in giving only the name of the plaintiff alphabetically. C. A. C.

Book Notice.

THE PRINCIPLES OF CONVEYANCING, with an Epitome of the Law of Corporeal Hereditaments. By HENRY C. DEANE, of Lincoln's Inn. Boston: Little, Brown & Co. 1875. pp. 494.

This work purports to be simply for the use of students, and, while seemingly devoted to conveyancing, fully two-thirds are given to the consideration of corporeal hereditaments. There are two styles of writing in favor with those who seek to give instruction; the one is clear, brief, succinct, didactic; the other aims at simple language, adopts the colloquial tone, and, while easily written, is not always easily read. The former is the style of Chitty and Kent, the latter is chosen by Mr. Deane. Though our author is unpretending, he has undoubtedly labored faithfully to render his work valuable to the student. To accomplish this purpose requires a higher order of talent than to write exclusively for the profession. Hence the most successful authors of text-books have been among the foremost men in legal learning and literary ability. Mr. Deane is apparently ill-adapted to the task he has given himself, and his book is probably worth more to the practitioner than to the pupil. Following Macaulay's sentiment concerning history, he seems to think the law should be made as entertaining as a novel, and in striving after this effect he frequently becomes involved and obscure. The first part, devoted to corporeal hereditaments, though traversing the way taken by Blackstone, Kent and Washburn, does not by any means supplant them, and the well-directed student can find in the works of these earlier writers all that Mr. Deane would give him, set forth in a manner the excellence of which Mr. Deane can not hope to rival. Still, to one already acquainted with the topics of which our author treats, this work can be very serviceable.

In the second part, which considers solely conveyancing, Mr. Deane has done himself much credit, and for his fidelity and labor here, his work deserves a place on the shelves of every well-chosen library. The seven chapters of this part treat, respectively, of the history of conveyancing, the conditions of sale, purchase deeds, leases, mortgage deeds, settlements, and wills. Here is given a compendious and explicit presentation of the principal doctrines bearing on the several subjects. The cases cited are numerous and leading, and the references to kindred authorities complete. The typography is unexceptionable. There is a full index, and the side-notes are frequent and pertinent. With the exception of the first two-thirds, which happily neither the student nor practitioner needs, this is a valuable work, and if the second part had issued independently of the first, it would have been better.

J. H.

Summary of Our Legal Exchanges.

ADVANCE SHEETS OF 66 ILL. REPORTS.*

1. Statute of Frauds — Verbal Agreement to Lease for Three Years.—Strehl v. D'Evers, opinion *per curiam*. [66 Ill. 77.] Where the complainant purchased of the defendant a stock of drugs, and, as a part of the same transaction, the defendant verbally agreed to give him a lease of the store-room for three years thereafter at a stipulated rent: *Held*, on bill by the complainant for specific performance of the agreement, and in case that relief could not be granted, for compensation and indemnity, that the contract was clearly within the statute of frauds, and therefore no specific performance could be decreed.

2. Evidence—Parol, to Vary Written Contract.—Strehl v. D'Evers, opinion *per curiam*. [66 Ill., Sec. 77.] The complainant on bill for specific performance, alleged that the defendant, on the sale to him of a stock of drugs as a part of the same transaction, verbally agreed to lease him the building where they were kept for three years, and that she did execute and deliver to him a lease for the premises for one year, which he accepted with full knowledge of the facts, supposing defendant would perform the parol agreement. The defendant denied any agreement to lease longer than one year: *Held*, that the previous negotiations were merged into the written agreement, and that the complainant, having accepted a lease for one year only, was estopped to allege that the contract was different in its essential terms from that expressed in the written lease.

*Courtesy of Hon. Norman L. Freeman, Springfield, Ill., Reporter.

Corporate Subscription in Aid of Railroad — Change in Name of Company does not Invalidate — Change of Route.—Town of Reading v. Wedder. Opinion by Walker, J. [66 Ill., 80.] Where a subscription of $50,000 was regularly voted and made, to the Chicago and Plainfield Railroad Company, and the bonds delivered to the Chicago, Pekin and Southwestern Railroad Company; and it appeared that, by an amendment of its charter, the name of the first mentioned company was changed to the latter name, its former rights confirmed, new ones conferred, and the company authorized to extend its road to Pekin: *Held*, on bill in chancery to enjoin the payment of interest on the bonds delivered in payment of the subscription, that, as the amendment changing the name of the company to which the subscription was made was not a fundamental change, the general purpose and direction of the road being the same, the stockholders and officers remaining the same, and the amendment having been accepted, the delivery of the bonds to the company under its new name was proper, and the bill was properly dismissed. 2. Where a town was authorized to subscribe to the capital stock of a railroad company, upon condition that it should pass through such town, and voted such subscription to a company whose charter was subsequently amended, changing the name of the company, and required the road to run from one county to another, without fixing any definite points, and the bonds were issued and made payable to the company by its new name, it was contended that the company could not construct its road through the town so subscribing: *Held*, as the court could see, by reference to a map of the state, that the road could be built so as to run through the township, the objection that the town was not authorized to make the subscription was not well taken.

Rape—Sufficiency of Evidence to Sustain Conviction.—Jacques v. People, opinion by Mr. Justice Breese. [66 Ill. 84.] On the trial of an

indictment against the defendant and one H., for rape, the proof showed that H. gave the girl some wine, and persuaded her to go to Chicago with him, which was but a short distance; that she left the saloon where she had been staying in the evening, and after walking about half a mile on the road to the city she was overtaken by H. and the defendant in a buggy, and was taken by them to the city, when defendant got out and left them, and she and H. went to a hotel together, where H. called for a room for himself and wife. It further appeared that they occupied the room together all night; that she went with H to the room voluntarily; made no outcry in the night or complaint the next morning; and the girl, in her cross-examination, stated that after leaving the buggy, she walked, but did not recollect of putting up at the hotel that night; that she woke up about seven o'clock the next morning; did not know that she had connection with H. that night; that, to her best knowledge, she did not with him or any other man; that she laid at the back of the bed, and that H. did not even feel of her, nor even ask her, or make a vulgar remark to her. On this evidence, the defendant was convicted of an assault with intent to commit a rape: *Held*, that there was no evidence to sustain the verdict, although it tended to prove a conspiracy between H. and the defendant to abduct the girl.

Divorce—Insanity.—Lloyd v. Lloyd, opinion by Scott, J. [66 Ill. 87.] The single point ruled in this case, is that insanity after marriage is not a ground for divorce. The following is the opinion in full:

This bill was for a divorce, and was exhibited by appellant against appellee, in the circuit court of Henry county, to the June term, 1872. Two grounds are assigned: first, that appellee is insane, and has been for a period of over twenty years; and second, the effect the insanity of appellee has upon the business relations of appellant, as well as the business relations of others with whom he has had dealings in matters of real estate for the last twenty years. It appears that the parties were married in the year 1840, and about the year 1852 appellee became insane, and was taken to the hospital, where she remained about five years, when she was discharged as incurable, and is now permanently and incurably insane. There is no pretense that appellee was insane previous to her marriage with appellant. It is conceded that insanity was not a cause for a divorce at common law, and that neither of the causes set out in the bill are among the specified causes of divorce enumerated in the statute. The divorce is sought under the provisions of section 8 of chapter 23, R. S. 1845, which provides that, "in addition to the causes hereinbefore provided for divorces from the bonds of matrimony, courts of chancery in this state shall have full power and authority to hear and determine all causes for a divorce not provided for by any law of this state." It is not necessary to discuss this case at any length. It falls exactly within the rule stated in Haymaker v. Haymaker, 18 Ill. 137, and we see no reason for departing from the doctrine of that case. The rule there stated is a wise and salutary one, and is dictated by every principle of a christian humanity. It would be a harsh rule indeed that would permit a man, who has married a woman who later in life becomes insane, to put her away on account of her inexpressibly sad misfortune. It is to the credit of our common humanity that there can not be found, in all the range of judicial proceedings, a single case that holds that insanity is, or could be, a cause for a divorce. There is no authority to be found in the statute or in common law, for granting a divorce on the ground of insanity, and the decree of the circuit court is affirmed.

THE WEEKLY REPORTER.*

Statute of Frauds, s. 4—Contract—Description of Parties—Demurrer—Costs.—Cummins v. Scott, Rolls Court, opinion by Sir George Jessel, M. R. [23 W. R. 498.] The plaintiffs, who owned and worked in the name of a company, a clay and tin mining property, put the property up for sale by auction. The conditions did not state who were the vendors, but it appeared from them (1) that the vendors were in possession; (2) that the abstract would be in respect of the interest of the company, and (3) that it was the interest of the company which was being sold. The property was bought in at the auction, and afterwards the defendants executed an agreement for the purchase thereof, which agreement incorporated the conditions of sale, and was signed by the company's solicitor "as agent for the vendors." To a bill for specific performance of the agreement the defendants demurred, on the ground that the agreement did not contain a sufficient description of the vendors. *Held*, that it sufficiently appeared that the company were the vendors, and that the demurrer must be overruled. The bill did not state that the plaintiffs were the company, and on account of this omission, the court ordered the costs of the demurrer to be costs in the cause.

*London: Edward J. Milliken, 12 Cook's Court, Carey St., W. C.

—JUDGE DILLON arrived at Queenstown, Ireland, on the 14th instant. From thence he proceeds to London and the continent, and returns home about the first of November.

Legal News and Notes.

—TWO new books have made their appearance during the past week—the long-looked for treatise of Mr. Wood on Nuisances, and the second edition of Wharton on Homicide.

—THE New York Court of Appeals has discharged Tweed from imprisonment on Blackwell's Island, holding that the cumulative sentences passed upon him, upon conviction under an indictment containing several hundred counts, were illegal.

—THE legal efforts to recover the money stolen from New York City under the Tweed ring are energetically pressed, and attachments have lately been issued against the property of Ex-County Court Commissioners Walsh and Coman.

—THE pardon of Ingersoll, the Tammany ring man, is beginning to bear fruit. Upon his affidavit, involving Peter B. Sweeney and his brother, James M. Sweeney, as sharers in the booty of the ring, attachments have been issued against their property in a suit in which the city will demand judgment for $7,132,598.

—A SEVENTEEN-YEAR OLD girl was lately brought from Alabama as a witness, to testify in a court in Carrollton, Ga. She was called to the stand, and appeared in it with a large navy revolver buckled on her waist. She was a pretty picture in petticoats. The court and lawyers gazed upon her in admiration. She passed her direct examination with very positive utterance. The lawyer of the opposite side was a well known bullier of witnesses. Fun was anticipated in the cross-examination, but the brow-beating attorney handled her tenderly. He was exceedingly careful not to approach the line of coarseness or impoliteness. His change of tactics was remarkable. It was a moral lesson in court. The witness was "armed so strong in honesty" that he did not shake her testimony—and let her drop from the stand lik a red-hot potato. There was no fun in it.—[*Saint Louis Republican.*

—THE Saint Louis Republican says that Judge Reed of Charleston, South Carolina, in passing sentence of death upon a murderer, recently, dilated upon the sorrows of this wicked world, and finally dropped into poetry, quoting gracefully the stanza:

This world is all a fleeting show,
For man's illusion given,
Its smiles of joy, its tears of woe,
Deceitful shine, deceitful flow,
There's nothing true but Heaven.

If Judge Reed could meet Chief Justice McKean, they would fall into each other's arms and weep as did Scott and Bazaine. They have robbed the judicial bench of its gravity, if they have not robbed death of its sting.

—APROPOS of the remarks made by us in reviewing the trial of Leavitt Allay (*ante*, p. 339), upon the propriety of inserting in an indictment a number of *counts*, describing the killing as having been done in different ways, a valued correspondent calls our attention to Mark Twain's form of indictment in the celebrated trial in the Gilded Age. "The clerk then read the indictment, which was in the usual form. It charged Laura Hopkins, in effect, with the premeditated murder of George Selby, by shooting him with a pistol, with a revolver, shot-gun, rifle, repeater, breech-loader, cannon, six-shooter, with a gun or some other weapon; with killing him with a slung shot, a bludgeon, carving-knife, bowie-knife, pen-knife, rolling pin, car-hook dagger, hair-pin, with a hammer, with a screw-driver, with a nail, and with all other weapons and utensils whatsover, at the Southern Hotel, and in all other hotels and places wheresoever, on the 13th day of March, and all other days of the Christian era whatsoever."

—A PHYSICIAN'S RIDICULE OF THE BENCH AND BAR.—It is constantly seen how invariably the bench and bar take every occasion to ridicule medical men; sometimes, however, this is returned with force and humor. In a well known trial recently, a physician, while on the witness stand, was asked the following question: 'Well Doctor, what did Mary say?" Turning to the judge with a grave face, he asked whether he should reply. The honorable dignitary, having this issue raised and fearing some disagreeable consequences, reflected and hesitated; meanwhile, counsel pro and con argued the legitimacy of the question and the propriety of a reply. After much eloquence and display of legal lore, it was determined the question was admissible, and his honor, turning to the physician, said "the witness will answer the question." The lawyer then formally asked the question again: "Well Doctor, please tell the court, what did Mary say?" Now came the physician's triumph. Assuming an air of gravity, he said: "Sir, Mary said nothing." The effect was indescribable, and all agre d that the tables had been turned; medicine was not at the usual disadvantage; it had made bench, bar and jury, the object of endless merriment and ridicule.—[*American Medical Weekly.*